Nos. 78-349 and 78-546

In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, PETITIONER

v.

HENRY HELSTOSKI, RESPONDENT

HENRY HELSTOSKI, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

HONORABLE H. CURTIS MEANOR, NOMINAL RESPONDENT

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF OF THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER; THE HONORABLE FRANK THOMPSON, JR., CHAIRMAN AND THE HONORABLE WILLIAM L. DICKINSON, COMMITTEE ON HOUSE ADMINISTRATION, OF THE UNITED STATES HOUSE OF REPRESENTATIVES, AS AMICI CURIAE

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The Speaker of the United States House of Representatives, and the Chairman of the Committee on House Administration hereby respectfully move for

leave to file the accompanying brief *amici curiae*. The consent of the Attorneys for Congressman Helstoski has been obtained. The consent of the Solicitor General was requested, but was declined. The Office of the Solicitor General has represented, however, that it does not object to the filing of the motion.

On October 15, 1978 the Ninety-Fifth Congress adjourned *sine die*. 124 Cong. Rec. H12995 (daily ed. Oct. 14, 1978) H.R. Con. Res. 760, 95th Cong., 2d Sess. Thereafter the petitions for certiorari in Nos. 78–349 and 785–46 were granted on December 11, 1978. On January 15, 1979, the Congress reconvened and proceeded to attend to certain organizational matters, including the swearing in of Members-elect, adoption of rules and election of the Speaker. 125 Cong. Rec. H1–4 (daily ed. Jan. 15, 1979).

Accordingly, the House adjourned before the Court accepted this important case for consideration and reconvened only very recently. This sequence of events did not permit the Speaker or the Chairman adequate time to prepare and file a brief before this time. However, a draft of this motion and brief were supplied to the Solicitor General by hand delivery on February 6, 1979 to afford the earliest opportunity for them to meet any points raised herein in their brief which is due on February 24, 1979.

As we believe the Court recognizes, this case presents for resolution questions of the most critical and fundamental nature to the legislative branch. The Speech or Debate Clause of the Constitution, and the concept of legislative immunity which it embodies, is

unique. There is no similar express grant duplicated in either Article II, concerning the Executive Branch, or Article III, concerning the Judiciary. The present case represents, in our view, a serious challenge to the continued viability of the Speech or Debate clause, as well as the interpretations of this Court which have addressed the scope and effect of the Clause. At issue is whether the legislative acts of a Member of Congress may be introduced into evidence against him at his trial for allegedly accepting bribes in return for being influenced in his official actions. *Amici* do not contend that Members of Congress should be exempt from bribery laws. Any Members' acceptance of a bribe is demeaning to every person holding elective legislative office, and Members should be held accountable for the acceptance of bribes. The proof of that act in any disciplinary forum other than the Congress, however, must be accomplished without compromising the jurisdiction of the Congress or inquiring into the legislative act or its motivation. Moreover, prosecutors should not be enabled by a decision of the Court to seek and obtain indictments, as was done in this case, upon the basis of legislative acts.

Because the case concerns the constitutional privileges of a coequal branch of government—the Legislature—we believe the Court should have before it the views of representatives of that Branch in deciding the case.

In this connection, *amici* believe that they are in a unique position to bring to the Court's attention views and arguments which will not be briefed by the par-

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ties. Specifically, *amici* intend to present their views with respect to the exercise of the Article I, § 5 disciplinary power bearing directly on this case, which is unlikely to be brought to the attention of the Court in the manner and detail discussed by *amici*. Secondly, the argument provided by *amici* on the critical issue concerning the validity of an indictment based on speech or debate material has not heretofore, to our knowledge, been presented to the Court and will not be provided by the parties.

As the constitutional officer of the body of the House responsible for upholding the privileges of all Members of the body and the Chairman of the Committee with responsibility for the proper and efficient management of House legislative and administrative functions, the Speaker and Chairman of the Committee on House Administration, respectfully, contend that as *amici* they are uniquely capable of presenting to the Court views and information which will assist the Court in deciding this case consistent with the demands of justice and the prerogatives of a co-equal branch.

Accordingly, *amici* urge that leave be granted to file the accompanying brief *amici curiae* and respectfully so moves this Court.

Respectfully submitted,

The Honorable Thomas P. O'Neill, Jr.,
Speaker, U.S. House of Representatives,
The Honorable Frank Thompson, Jr.,
Chairman, Committee on House Administration,
U.S. House of Representatives.
and
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HONORABLE H. CURTIS MEANOR, *Nominal Respondent*

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The Speaker of the United States House of Representatives, pursuant to the authority vested in him by the Constitution and rules of the House, and the Chairman of the Committee on House Administration hereby appear as *amici curiae*. Consent to file has been obtained from Congressman Helstoski's attorneys. Consent was requested from the Solicitor General but was declined. The Solicitor, however, has stated he will not oppose the filing of the motion. Copies of these letters have been filed with the Clerk's Office.

INTEREST OF THE AMICI CURIAE

The present case involves issues of paramount importance to the Legislative Branch of government and the due functioning of the legislative process. The Speech or Debate Clause of the Constitution, as the great bulwark of the doctrine of separation of powers and the Framers' guarantee of a vigorous and independent Congress, virtually uninterpreted for the first century of the republic's existence, has been subject with increasing frequency to judicial review. Because of the importance of the Clause to the legislative branch as a separate and distinct institution of government, *amici* believe the Court should have before it views and information, in addition to that supplied by the parties, furnished by representatives of the branch to assist in its consideration and resolution of the issues presented. Truly, the Members of the House and Senate will live with the decision in this case.

As the Constitutional officer of the House of Representatives, U.S. Const., art. I, § 2, cl. 5, the Speaker has a direct responsibility to protect the constitutional rights and privileges of the body which elects him. The challenge to the scope and efficacy of the Speech or Debate Clause protection presented by this case, as well as the other constitutional powers of the House, clearly implicates the interests of the Speaker in upholding the rights and privileges of the House.

In addition, the House by specific resolution has, for example, delegated to the Speaker the responsibility to insure that subpoenas for documentary evidence in possession and control of the House are consistent with the rights and privileges of the House, H.R. Res. 10, 96th Cong., 1st Sess., 125 Cong. Rec. H17 (daily ed. Jan. 15, 1979). *See also, for example,* 2 U.S.C. § 194 requiring the Speaker to certify and report to the United States Attorney for prosecution any failure by a witness called to testify before Congress, and *Wilson* v. *United States,* 369 F. 2d 198 (D.C. Cir. 1966) [statute provides discretion to Speaker to determine whether to certify and report to the United States Attorney failure of witnesses to testify].

From the inception and emergence of parliamentary democracy in England, the Speaker of the House has by custom and tradition, as well as rule of law, been responsible for the protection of the legislature's privileges. T. Plucknett, Taswell-Langmead's English Constitutional History From the Teutonic Conquest to the Present Time, 209, 264–47 (11th ed. 1960). As recently stated: "he [the Speaker] is charged with

protecting the rights of *all* the Members of the House, majority and minority Members alike." The Office and the Duties of the Speaker of the House of Representatives, H.R. Doc. No. 95–354, 95th Cong., 2d Sess. 5 (1978) [ordered printed by the House pursuant to H.R. Res. 1136, 95th Cong., 2d Sess. (1978).]

Likewise, the Chairman of the Committee on House Administration, which has broad responsibility under the rules of the House and statute to implement and oversee the orderly and efficient administration of the House, has a direct interest in insuring the integrity and viability of the internal affairs and procedures by which the House conducts its legislative business, including the introduction of bills and the supervision and oversight of their enrollment and the operation of Committee offices and other internal units within the House of Representatives.

SUMMARY OF ARGUMENT

The Speech or Debate Clause of the Constitution, as has often been stated, is not a personal protection to shield the misdeeds of a Member of Congress from prosecution. Rather it is an integral component of the doctrine of separation of powers upon which our government is founded and is intended to insure an independent and rigorous Legislative Branch functioning free of the threat of retaliation from the prosecutorial department for the performance of acts carried out in furtherance of the Article I legislative power.

When a grand jury charges and the prosecution seeks to prove legislative acts and references to those

acts in connection with a prosecution under the federal bribery statute the permissable bounds of the Speech or Debate Clause, as enunciated in the decisions of this Court regarding both the Clause and its underlying purpose, has been exceeded.

In order to give effect to the prior decisions concerning the Clause, two points will be urged: (1) the ruling fashioned by the Third Circuit in this case prohibiting the introduction into evidence of private immigration bills and references to those bills is consistent with the holdings in the *Johnson* and *Brewster* cases; and (2) an indictment clearly returned by a grant jury on the basis of speech or debate material submitted to it by the prosecution is defective and cannot stand. Although the policies underlying the proscription, grounded upon the Fifth Amendment, against hearsay evidence and the Fourth Amendment prohibition against unreasonable searches and seizures do not require the dismissal of indictments resulting from breaches of those protections, the policies upon which the Speech or Debate Clause are premised render a breach of the privilege before a grand jury fatal to the indictment in that it constitutes both a prohibited questioning of an individual Member and a violation of the separation of powers doctrine, which the Clause is designed to effect.

In complement to the Speech or Debate Clause, the Framers of the Constitution vested power in the Congress to discipline its own Members for legislative misconduct. The House has, in recent years, responsibly and vigorously exercised this power in a number

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of areas where legislative misconduct has been discovered. The House has done so with full recognition of the constitutional limits of its powers and consistent with fundamental notions of fairness and justice by providing a comprehensive array of procedural and substantive safeguards to Members charged with misconduct. Moreover, the House has proceeded in a non-partisan and judicious manner, and the record established by the House in pursuit of these matters has been exemplary, with respect to the thoroughness of the investigation of misconduct and the rendering of judgment by the House. Accordingly, the Speech or Debate Clause, together with the disciplinary power, vests jurisdiction in the House to charge, try, and punish Members for legislative misconduct, which the House has exercised in an appropriate and just manner. This jurisdictional allocation does not prevent criminal prosecutions of Members of Congress for violations of criminal law such as the federal bribery statute, but simply requires that such criminal prosecutions be conducted in a manner consistent with the Clause and the decisions in the *Johnson* and *Brewster* cases.

In regard to the question of whether the Speech or Debate privilege can be waived, it is submitted that the Clause imposes more of a constitutional prohibition on the powers of the Executive and the Judiciary than a personal privilege for individual Congressmen. The clear historic purpose of the Clause is to protect and foster the separateness and independence of the Legislative Branch from intimidation or coercion by a

possibly hostile Executive or Judiciary. Moreover, the Clause, where applicable, imposes an *absolute bar* to the interference it proscribes. *Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491, 503 (1975). Accordingly, the prohibition is jurisdictional in nature and can not be "waived" either by an individual Member of Congress, or by Congress, or by both acting in conjunction.

Should this Court, nevertheless, seek to fashion a doctrine of waiver applicable to the Speech or Debate Clause, the policy behind the Clause dictates that any such doctrine be a strictly limited and precisely defined one: any waiver must be express and not implied; any waiver must require the concurrent acquiescence of the Member being questioned and of Congress (or of the Member's House); and any waiver must be limited to the precise proceedings at which it is made and not spill over to apply to other, subsequent proceedings.

ARGUMENT

I. THE CONSTITUTION VESTS EXCLUSIVE JURISDICTION IN THE HOUSE FOR THE PUNISHMENT OF MEMBERS ON ACCOUNT OF PERFORMANCE OF LEGISLATIVE ACTS AND THE HOUSE HAS APPROPRIATELY EXERCISED THAT JURISDICTION

The Speech or Debate Clause, as written by the Framers and interpreted by this Court, prohibits the "questioning" of a Member outside of the House for legislative conduct performed *in* the House. U.S. Const., art. I, § 6, cl. 1. In addition, each House of

Congress is authorized to "punish its Members for disorderly Behavior, and, with the concurrence of two thirds, expel a Member." U.S. Const., art I, § 5, cl. 2.

These two provisions, taken together, provide the basis upon which the House may inquire into legislative conduct by Members and render punishment for acts which are deemed by the body contrary to appropriate congressional standards or mores.[1]

Operating in complement to each other, the Speech or Debate Clause and the Punishment Clause deprive the Executive and Judicial Branches of jurisdiction to question, charge, try or punish a Member for legislative misconduct within the House.

The policies and purposes underlying this jurisdictional concept have been thoroughly explored and articulated by this Court in previous cases. See *United States* v. *Johnson,* 383 U.S. 169, 177–182 (1966); *Gravel* v. *United States,* 408 U.S. 606 (1972); *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 503 (1975). As these cases indicate, the Speech or Debate Clause enforces the separation of powers doctrine so integral to the proper functioning of our tripartite form of government and prevents

[1] Article I, § 5, cl. 1 of the Constitution provides separate authority for the House to be "the Judge of the Elections, Returns and Qualifications of its own Members." The power of the House to *exclude* a Member under this grant has been described as "more an incident of Congress' power as supreme board of elections than of its power as guardian of congressional ethics." McLaughlin, *Congressional Self Discipline: The Power To Expel, To Exclude and To Punish,* 41 Ford.L.Rev. 43, 58 (1972). Accordingly, this provision will not be considered further here.

intimidation of legislators by the executive or accountability before the judiciary for legislative acts and is firmly rooted in English parliamentary history.[2]

From the earliest days of the republic, each House of Congress has exercised the exclusive jurisdiction conferred upon it by the Constitution to discipline Members for legislative misconduct, unruly behavior or acts reflecting discredit upon the integrity of the body. *See,* HOUSE OF REPRESENTATIVES EXCLUSION, CENSURE AND EXPULSION CASES FROM 1789 TO 1973, SUPPLEMENTAL APPENDIX TO HEARINGS ON CONSTITUTIONAL IMMUNITY OF MEMBERS OF CONGRESS, JOINT COMM. ON CONG. OPERATIONS, 93d Cong., 1st. Sess. (Comm. Print 1973).

In the course of its holding in *United States* v. *Brewster,* 408 U.S. 501, 518 (1972) commenting upon Senator Brewster's contention for a broad interpretation of the Clause which would exempt from judicial inquiry matters related in any way to the legislative process, this Court raised doubts about the ability of

[2] Early American experience ratified the necessity for and wisdom of the Clause's inclusion in the Constitution. During the infamous "alien-sedition" period, the Federalist administration used the judiciary to intimidate and harrass anti-Federalist Congressmen. For a detailed discussion of the background and substance of these cases *see* Reinstein & Silverglate, *Legislative Privilege and the Separation of Powers,* 86 Harv. L. Rev. 1113, 1140–1144 (1973) [*Cabell's Case* and *Matthew Lyon's Case*]. Nor has the passage of time proven that we have experienced the last of such abuses. A recent indictment of former Congressman Garmatz was voluntarily dismissed at the request of the U.S. Attorney's office after it was discovered that the prosecution's main witness had contrived a story to implicate the Congressman to shield himself from prosecution. Washington Post, Jan. 10, 1978, at 1, col. 1.

the Congress to properly and actively exercise its Article I, § 5 disciplinary power. The Court stated that "Congress has shown little inclination to exert itself in this area," *United States* v. *Brewster,* 408 U.S. at 519, and that even if Congress were so inclined, "The process of disciplining a Member in the Congress is not without countervailing risks of abuse since it is not surrounded with the panoply of protective shields that are present in a criminal case." *Id.*

Whether those statements were accurate at the time they were voiced, they certainly no longer accurately depict efforts by the House to fully exercise the powers available to it under the Constitution's grant of jurisdiction to "investigate, try and punish" its Members for behavior related to the legislative process.

In this connection, the House recently completed its investigation, trial and punishment of certain Members of the House for conduct elicited during the so-called Korean Influence Investigation. In response to allegations about attempts by purported agents and representatives of the government of the Republic of Korea to influence through gifts and emoluments to Members of the House, United States policy toward and relations with the Republic of Korea, the House passed a special resolution authorizing and directing the Standing Committee on Standards of Official Conduct ("Committee") to "conduct a full and complete inquiry to determine whether Members of the House . . . accepted anything of value from the Government of Korea," H.R. Res. 252, 95th Cong., 1st Sess. (1977); 124 Cong. Rec. H984–993 (daily ed. Feb. 9, 1977), and to recommend to the House "such action, if

any, that the Committee deems appropriate with respect to individual Members, officers and employees of the House as a result of any alleged violation of the Code of Official Conduct or any law, rule, regulation or other standard of conduct applicable to the conduct of such Member, officer or employee in the performance of his duties or the discharge of his responsibilities." *Id.*

That the House was acting in pursuance of its Article I, § 5 disciplinary power is clear from the following introductory statement adopted by the Committee soon after its mandate from the full body to pursue this matter:

> "The committee resolution contemplates two distinct types of proceedings, which may take place concurrently or in successive stages. (Compare sec. 1 and 2 with sec. 3) [of H.R. Res. 252, *supra*] One type is a general investigation to ascertain the basic pattern of questionable contacts between Korean representatives and Members of the House, so that the committee can assess the adequacy of existing laws and standards. The other type involves the lodging and investigating of charges against specific Members of the House, *in order to determine whether to recommend that the House exercise its power under Article 1, Section 5, clause 2, of the Constitution to 'punish its Members for disorderly Behaviour, and, with the concurrence of two-thirds, expel a Member.'*"

MANUAL OF OFFENSES AND PROCEDURES KOREAN INFLUENCE INVESTIGATION PURSUANT TO HOUSE RESOLUTION

252, COMM. ON STANDARDS OF OFFICIAL CONDUCT 95th Cong., 1st Sess. 1 (Comm. Print 1977) (hereinafter referred to as "Manual of Offenses and Procedure") (emphasis added).

In order to guarantee a complete and thorough investigation, the House engaged eminent special counsel, Mr. Leon Jaworski, to conduct the proceedings of the Committee. During the course of the investigation the Committee held 72 meetings, including 16 public hearings, and its staff conducted 718 interviews, took 165 sworn depositions, obtained more than 40,000 documents, and authorized immunity grants for 19 individuals. [Summary of Activities, a Report of the Comm. on Standards of Official Conduct,] H.R. Rep. 95–1818, 95th Cong., 2d Sess. (1978).[3]

The ability of the Committee to carry out its mandate from the House was enhanced by the recruitment of a special staff of attorneys, investigators and support staff with substantial prior experience in law enforcement, and financial investigations much of

[3] The methodology and scope of the inquiry was broad and its implementation was vigorous. As a preliminary step, the Committee directed a questionnaire to each person who served as a Member of the House since January 3, 1970, which inquired about contacts with representatives of the Korean government, and the offer of receipt of gifts of over $100 in value. KOREAN INFLUENCE INVESTIGATION, REPORT BY THE COMM. ON STANDARDS OF OFFICIAL CONDUCT, H.R. Rep. No. 95–1817, 95th Cong., 2d Sess. 2 (1978) ("Final Report"). Followup interrogatories were directed to Members after review. *Id.* at 3. The Committee also sought and received information from other agencies of the Federal Government. *Id.*

which was gathered in executive branch law enforcement agencies and departments. Final Report at 2.

As a result of the investigation, statements of alleged violation were filed against four incumbent Members of the House. Final Report, *supra* at 57. In addition, seven other Members of the House who were investigated were specifically absolved of any wrongdoing or impropriety. *Id.* at 58. Finally, it was determined that five additional former Members who had been investigated were beyond the jurisdiction of the House, and in any event had not been active participants in the alleged Korean influence scheme. *Id.* at 59.

The full House, to which disciplinary recommendations were reported by the Committee on three Members, acted by voting disciplinary sanctions in each case. 124 Cong. Rec. H12820–12828, H13249–13261 (daily ed. Oct. 13, 1978).[4]

This very recent massive and comprehensive exercise of the Article I, § 5 disciplinary power by the House should sufficiently counter any remaining impression that the House "has shown little inclination to exert itself" in the disciplinary sphere. Moreover,

[4] Since the "Committee pursued its investigative task much as does a grand jury . . . evidence was gathered and evaluated in executive session. . . . Thus, the publication of suspicious but unreliable information was avoided." Final Report at 4. In one case, the Committee, after deliberating under the prescribed procedure on the statement of alleged violation, and after briefing and oral argument, dismissed the charges because they were not sustained by the evidence. In the Matter of Representative Edward J. Patten, H.R. Rep. No. 95–1740, 95th Cong., 2d Sess. 1–4 (1978).

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the recent disciplinary exercises by the House have not been limited by any means only to legislative misconduct which assumes the grandiose and complex proportions of those of the Korean influence scheme. In the recent Congresses, Members have been investigated and disciplined for a variety of legislative activities, including failing to report certain financial holdings as required by House rules, and for investing in stock in a Navy bank, the establishment of which the Member was promoting, In The Matter of a Complaint Against Representative Robert L. F. Sikes, H.R. Rep. No. 94–1364, 94th Cong., 2d Sess. (1976), H.R. Res. 1421, 94th Cong., 2d Sess. (1976); 122 Cong. Rec. H7924–7927 (daily ed. July 29, 1976); for the release and disclosure of classified information in possession of the House by a Member thereof in violation of House rules, 31 Congressional Quarterly Almanac 401 (1975);[5] and for violating the Code of Official Conduct of the House of Representatives in allegedly receiving compensation from a law firm, a part of which was for services rendered by the firm in connection with a

[5] In this case, it was determined, upon reference and consideration of a complaint to the Committee on Standards, not to recommend any action against the Member involved, since the hearing at which the information had originally been disclosed to the House was not a legally constituted executive session. However, although the Member was not disciplined by the committee with jurisdiction of ethical conduct, the Committee on Armed Services, before whom the information was adduced, formally denied further access by the Member to classified information during the pendency of consideration of the matter by the Committee on Standards. 121 Cong. Rec. D725 (daily ed. June 16, 1975).

matter before a government agency. In the Matter of Representative Joshua Eilberg, Statement of Alleged Violations, Sept. 13, 1978, H.R. Rep. No. 95–1818, *supra* at 3.

Of equal significance is the degree to which the "countervailing risks of abuse" referred to in *Brewster* have been minimized by adoption of and compliance with detailed rules of procedure and process to guarantee that the disciplinary power is exercised responsibly and fairly.

The Constitution, in Article I,§ 5,cl.2, confers express authority on the House to "determine the Rules of its Proceedings." Acting under this grant, the House has conferred jurisdiction concerning the discipline of Members to the Committee on Standards of Official Conduct, H.R. Rule X,cl.4(e)(1), Rules of the House of Representatives § 698 at 408, *reprinted in,* H.R.Doc. No. 94–663, 94th Cong., 2d Sess. (1977) ("Rules of the House"). In addition, H.R. Rule XI,cl.2(a), Rules of the House, § 704 at 423, provides that "[e]ach standing committee of the House shall adopt written rules governing its procedure." Accordingly, the Committee on Standards has developed detailed rules of procedures governing complaints lodged against Members. Rules of the Committee on Standards of Official Conduct, *reprinted in* RULES ADOPTED BY THE COMMITTEES OF THE HOUSE OF REPRESENTATIVES, SELECT COMM. ON CONG. OPERATIONS, 95th Cong., 1st Sess. 203–210 (Comm. Print 1977) (hereinafter "Committee Rules"). These rules require that complaints filed by an individual be in

writing and under oath and be concisely pleaded together with specific factual averments, Committee Rule 5(a) at 204. In addition, a respondent to a complaint has 21 days within which to respond, either by answer or motion, Committee Rule 7(a)(1) at 205, and with respect to motions may affirmatively plead, *inter alia,* lack of jurisdiction of the Committee to investigate, an objection to the complaint on the grounds of improper form or failure to state facts constituting a violation of applicable law, rule or standard of conduct. Committee Rule 7(a)(1)(B) & (C) at 205. The staff is authorized to respond to any motion or answer, and such responses are furnished to the respondent. If it is determined to proceed beyond a preliminary inquiry to the investigative stage, other safeguards attend the investigative hearing stage of the proceeding. The respondent is (1) given an opportunity to apply for issuance of subpoenas for witnesses or for the production of documents, Committee Rule 12(d) at 208; and (2) permitted through himself or counsel to cross-examine Committee witnesses, Committee Rule 10(c)(1)(C) at 207. In addition, under applicable rules, the Committee may determine, where appropriate in its discretion, to proceed in executive session, H.R. Rule XI,cl.2(K)(5), Rules of the House, *supra,* § 712 at 435. Other procedural and substantive safeguards apply by virtue of the Committee Rules including rules prohibiting unauthorized disclosure of information in possession of the Committee, Committee Rule 15(a).

These protective provisions amply support a finding that the House, in view of the potentially serious ramifications for a Member subject to a disciplinary proceeding, accords a Member charged with misconduct within the House, the full "panoply of protective shields present in a criminal case," *United States* v. *Brewster,* 408 U.S. 501, 519 (1972).[6]

Contrary to the contention in *Brewster,* that a Member is "at the mercy of an almost unbridled discretion of the charging body . . . from whose decision there is no established right of review," this Court has itself fashioned protections and established the availability of review in disciplinary cases where the legislative body has exceeded its authority, violated procedural mechanisms provided in the Constitution governing disciplinary proceedings or issued judgments which contravene specific constitutional guarantees in *Powell* v. *McCormack,* 395 U.S. 486, 512, 548 (1969), this Court found jurisdiction and a justiciable case or controversy under Article III when the late

[6] In the Korean influence investigation, because of the unprecedented scope of the inquiry and to insure adherence to readily cognizable standards in determining whether a Member, officer or employee acted properly, the Committee identified the specific provisions of the Constitution, Federal statutes, regulations, House rules and other standards on which it relied in assessing whether conduct was improper or unethical, Manual of Offenses and Procedures, *supra,* at 4–38, as well as the standard of proof required to support a finding of such conduct. *Id.* at 38–40. This represented an additional safeguard against arbitrary or capricious judgments since it required the Committee to specify the standards on which it would assess conduct and also placed potential respondents on notice as to the likely nature of charges to which they might be required to answer.

Adam Clayton Powell successfully invoked judicial review of his exclusion from the 90th Congress to which he had been duly elected. In *Bond* v. *Floyd,* 385 U.S. 116 (1966), this Court found that a state legislator's statements denouncing the Vietnam War provided no legal basis for his disqualification from office, that his expression of sympathy for those unwilling to respond to the draft was not a call to an unlawful refusal to repond and that the disqualification of the legislator because of his statements violated his right of free expression under the First Amendment. *Bond* v. *Floyd,* 385 U.S. at 137.

The Court has shown no reticence to review legislative disciplinary proceedings and, where necessary, remedy constitutional wrongs. Although *amici* believes that deference should be shown to a coordinate branch acting regularly and under specific constitutional grants of power, there is no doubt, and the Court has recently reaffirmed, that "'(i)t is emphatically the province and duty of the judicial department to say what the law is,'" *United States* v. *Nixon,* 418 U.S. 683, 703 (1974), *quoting Marbury* v. *Madison,* 1 Cranch 137, 177 (1803), even as to the scope and exercise of a coordinate branch's authority.

Finally, the Court in *Brewster,* citing to precedents over 100 years old, 408 U.S. at 520 n.14, expressed skepticism that "the triers would be wholly objective and free from considerations of party and politics and the passions of the moment," *id.,* and suggested further that congressional trials conducted by an "entrenched majority from one political party could

result in far greater harrassment than a conventional criminal trial with the wide range of procedural protections for the accused . . . " *id.*

The record of more recent disciplinary efforts fails to reveal evidence of the kind of partisanship and political opportunism which the Court fears. Certainly the record compiled during the Korean Influence Investigation is devoid of any evidence of favoritism toward Members of the majority party or abuse of Members of the minority party.[7] Nor does the minority itself perceive that the majority has, in exercising its responsibility under the Constitution and Rules of the House, breached any principle of fairness or carried out their functions except with the highest sense of duty. In commenting upon the conduct of the majority during the course of an investigation under the Article I, § 5 power of the House to judge the elections of its Members, the minority extolled the Chairman and majority Member of the panel charged with undertaking the investigation:

> "I want to take this opportunity to express my deepest respect and gratitude to Chairman Davis and Representative Gaydos for the way they undertook this task. . . . There was no partisanship displayed at any time during the course of the investigation and I feel it must be said that this panel approached this responsibil-

[7] Of the sitting Members as to whom the Committee instituted disciplinary proceedings, all four were Members of the majority party, and as to sitting Members who were investigated as to whom no charges were lodged, all seven were members of the majority. With respect to the former Members who were allegedly given cash contributions by Korean representatives, three of five were members of the majority.

> ity in a non-partisan manner which exceeded even the standards of bi-partisanship." REPORT OF THE SPECIAL AD HOC PANEL OF THE COMM. ON HOUSE ADMINISTRATION ON THE SECOND DEMOCRATIC PRIMARY ELECTION HELD ON OCT. 2, 1976 FOR THE U.S. HOUSE OF REPRESENTATIVES FROM THE FIRST CONG. DISTRICT OF LOUISIANA, 95TH CONG., 1ST SESS. 11 (COMM. PRINT NO. 2 1977) (SUPPLEMENTAL VIEWS OF REP. BADHAM).

The Member reiterated this view later:

> "[W]e have shown that the House is willing and eager to consider on the merits challenges to the virtue of the House and no considerations of sectionalism, partisanship, or favoritism have any place in the consideration of a question of this import." *Id.* at 14.

It is also noteworthy that the panoply of safeguards described earlier, *supra* at 21, applied at all stages of the Korean Influence Investigation. *See, for example,* In the Matter of Representative John J. McFall, H.R. Rep. No. 95–1742, 95th Cong. 2d Sess. 1–4 (1978). A review of the extensive legal and factual argumentation presented during this case belies any notion that judgment was rendered precipitately or without regard to the rights of the accused.[8]

[8] The report, together with exhibits, including the Committee's and Respondent's Proposed Findings of Fact and Conclusions of Law, the Answer of respondent, as well as respondent's motion to dismiss the statement of alleged violation and the response of the staff thereto, together with the transcript of hearings, argument and the decision of the Committee, runs 446 pages in all. H.R. Rep. No. 95–1742, *supra.*

Amici submit that the recent conduct of the House in pursuance of its Article I, § 5 power not only complied with rigorous standards of fairness and fundamental rights, but is exemplary of the ability and willingness of the House "to investigate itself," *Final Report, supra* at 6, through an abundance of "justice with law."

II. AN INDICTMENT BASED ON GRAND JURY REVIEW OF SPECIFIC LEGISLATIVE ACTS IS DEFECTIVE AND CANNOT STAND CONSISTENT WITH THE SPEECH OR DEBATE CLAUSE.

A. THIS COURT'S HOLDINGS IN *COSTELLO* AND *CALANDRA* DO NOT REQUIRE THE DENIAL OF DEFENDANT HELSTOSKI'S MOTION FOR WRIT OF MANDAMUS.

The District Court found "untenable" Defendant Helstoski's contention that the first four counts of the indictment should be dismissed because the grand jury heard evidence regarding his legislative acts. *United States,* v. *Helstoski,* No. 76–201 (D.N.J., Feb. 22, 1977) (unpublished opinion) Pet. for Cert., No. 78–349, App. at 42a.

Judge Meanor, in so holding, placed primary reliance on the denial of a similar motion made by Congressman Johnson upon demand, by this Court, of his cured indictment for a new trial. *United States* v. *Johnson,* 419 F.2d 56 (4th Cir. 1969), *cert. denied,* 397 U.S. 1010 (1970) (hereinafter referred to as *"Johnson II"*). The district court further relied on

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this Court's holdings in *Costello* v. *United States,* 350 U.S. 359 (1956) (the only case cited in the pertinent portion of the body of the opinion by the Fourth Circuit in *Johnson II, supra*), and in the more recent *United States* v. *Calandra,* 414 U.S. 338 (1974).

Similarly, these three cases provide the essence of the reasoning employed by the Court of Appeals for the Third Circuit in holding that "it is far from 'clear and indisputable' that defendant [Helstoski] could prevail on his argument that presentation to the grand jury of evidence in violation of the Speech or Debate Clause required dismissal of the indictment." *United States* v. *Helstoski,* 576 F. 2d 511, 519 (3rd Cir. 1978).

As noted above, this Court denied certiorari in the one previous case which directly posed the question of the validity of an indictment of a Member of Congress produced by a grand jury which had been presented with evidence of the legislator's legislative conduct. *United States* v. *Johnson, cert. denied,* 397 U.S. 1010 (1970). This portion of Helstoski's petition therefore presents, as a case of first impression, an opportunity to decide if the Speech or Debate Clause requires the dismissal of an indictment which facially and conclusively indicates that the grand jury was presented with speech or debate material, in order to give effect to the constitutional policy upon which the Clause is premised.

The courts below, both in *Johnson II, supra,* and the instant case, have misread the holdings in *Costello* v. *United States, supra,* and *United States* v.

Calandra, supra, as being dispositive of this question. However, as will be shown, neither case is on point.

Costello v. *United States, supra,* arose from an indictment of defendant Costello for tax evasion. The prosecution, in its case-in-chief, introduced the testimony of 144 witnesses, and 368 exhibits, all relating to business transactions and expenditures by the defendant and his spouse. To conclude their presentation the prosecution called three government investigative agents who summarized the evidence already adduced at trial and testified as to their accounting computations which were introduced as evidence that the defendant and his spouse had received income far in excess of that which they had declared. Defense counsel, in cross-examination, questioned each of the 147 prosecution witnesses as to whether they had appeared before the grand jury. As the Court noted, "This cross-examination developed the fact that the three investigating officers had been the only witnesses before the grand jury." *Costello* v. *United States, supra* at 361.

Upon the conclusion of the prosecution's case the defendant sought dismissal of the indictment on the ground that since the only testimony received by the grand jury had been hearsay, and since hearsay testimony is incompetent, the grand jury was without authority to return an indictment. The trial court denied the motion for dismissal of the indictment. The trial proceeded and Costello was later convicted. The Court of Appeals, having found that the only evidence presented to the grand jury was hearsay, affirmed the

denial of the motion for dismissal of the indictment, holding that an indictment was valid even though the sole evidence before the grand jury was hearsay. *Costello* v. *United States,* 221 F. 2d 668 (2d Cir. 1955).

This Court upheld the lower court's opinion declaring that while incompetent evidence could be excluded at trial, the Fifth Amendment did not require the vacating of a grand jury's indictment by reason of the incompetency of the evidence heard. Justice Black, recalling the English historical antecedents, stated that, "It [a rule allowing a challenge to an indictment based upon the "competency of evidence"] would run counter to the whole history of the grand jury institution, in which laymen conduct their inquiries unfettered by technical rules." *Costello* v. *United States,* 350 U.S. at 364. This Court held that the protection against the use of incompetent evidence, deriving as it does from the Fifth Amendment, could properly be applied at trial and that, as quoted by the court below in the instant case, "The Fifth Amendment requires nothing more." *Costello* v. *United States, supra* at 363. See Pet. for Cert., No. 73-349, App. at 43a.

However, the prohibition against extra-legislative questioning contained in the Speech or Debate Clause, and the policies and history which it embodies, is different in nature from the ban on the use of incompetent evidence. The question presented to this Court today is not whether the Fifth Amendment requires the vacating of the indictment, but whether the Speech or Debate Clause requires such a dismissal. Moreover, as will be shown later, the history of the interaction between the English Speech or Debate privilege and their judicial system clearly indicates that English Constitutional law, the breeding ground of both the Speech or Debate privilege and the grand jury system of pre-trial accusations, does not allow an indictment to be brought against a legislator on the basis of evidence falling within the scope of the privilege.

The "hearsay" evidence presented to the *Costello* grand jury was tainted in that, as hearsay, there were questions raised as to its veracity. The present controversy raises questions of a totally different nature. No one argues that Mr. Helstoski, as a Member of the House of Representatives, did not introduce the bills presented to the grand jury. This is not a situation analogous to *Costello,* and what was viewed in that situation as an adequate protection—the ability to challenge the competency of testimony at trial—is inappropriate here. It needs to be remembered that the Speech or Debate Clause protects not simply the procedural rights of individual Members of Congress, but rather the right of this nation and its citizens to have an independent legislature secure in its freedom of speech or debate.

That the introduction of speech or debate material to a grand jury for the purpose of investigating and indicting a Member of Congress would be injurious to the interests which the Clause seeks to protect is, as was held in *Gravel* v. *United States,* 408 U.S. 606, 615 (1972), "incontrovertible."

It is inconceivable that this Court would fashion a rule which would allow the intimidation of legislators by allowing a prosecutor to seek and obtain an indictment without regard to the constitutional Speech or Debate privilege. Similarly, the fear of abuse and delay of the judicial system resulting from a rule allowing a pre-trial challenge to an indictment on the basis of the "competency" of evidence presented to the grand jury which prompted the holding in *Costello* simply is not realistic or substantial enough to warrant application of the policy of Costello to the limited occasions when a Member of Congress is called before the judiciary on the basis of an indictment returned by a grand jury which had presented to it legislative material.

Moreover, that the courts would sanction the bringing of indictments by prosecutors against legislators using Speech or Debate material only to be thwarted at trial in going forward with the case, or reversed upon appeal, hardly squares with modern notions of the administration of justice or economy and efficiency of judicial resources. Of course, after indictment, as in this case, the political death blow may have already been dealt at the polls—precisely the reason the Clause was inserted in the Constitution as a "prophylactic" measure to prevent the Executive from ridding the legislature of disfavored legislators. Any transgression of the immunity conferred by the Clause should be corrected at the earliest possible juncture, in this case by a dismissal of the offensive indictments.

Thus, this case differs in almost every material as-

pect from *Costello* in that it is a Speech or Debate case as opposed to a hearsay evidence case; in that there is no reason to fear that allowing pretrial challenges will cause major abuse or delays of the criminal justice system; in that the English historical references will show that this type of case, free speech or debate by legislators, was outside the jurisdiction of the English grand juries; and finally that the very reasons which moved the Framers of the Constitution to include an explicit Speech or Debate privilege in the body of the Constitution provides the "persuasive reasons" for dismissal found lacking, by this Court, in *Costello*. Therefore, this Court should not rely on the holding in *Costello* and should likewise go beyond the Fourth Circuit's ruling in *Johnson II* which relied, in pertinent part, solely on *Costello* v. *United States, supra.*

The lower courts, and the Department of Justice, also attributed great precedential value to this Court's holding in *United States* v. *Calandra,* 414 U.S. 383 (1974). Judge Meanor cited *Calandra* for the proposition that "the validity of an indictment is not affected by the character of the evidence considered [by the Grand Jury]." *United States* v. *Helstoski,* No. 76–201 (D. N.J., Feb. 22, 1977) (unpublished opinion) Pet. for Cert. No. 78–349, App. at 43a, *quoting United States* v. *Calandra, supra at* 344–45. In *Calandra* this Court refused to apply the exclusionary rule of the Fourth Amendment to grand jury proceedings. The Court reviewed the role of the court-

fashioned exclusionary rule established in *Weeks* v. *United States,* 232 U.S. 383 (1914), and *Mapp* v. *Ohio,* 367 U.S. 643 (1961), and stated that:

> "The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim:
>
> > '[T]he ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late.' *Linkletter* v. *Walker,* 381 U.S. 618, 637 (1965).
>
> Instead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures:
>
> > 'The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.' *Elkins* v. *United States,* 36 U.S. 206, 217 (1960).
>
> In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *United States* v. *Calandra, supra* at 347–48.

The privileges and protections afforded our legislators in the Speech or Debate Clause, and its underlying purpose, render it vastly dissimilar to the court-fashioned exclusionary rule for illegally seized material.

The intimidation of a single legislator, achieved

by the executive branch presenting evidence as to the legislator's legislative activity to a grand jury which has targeted the Member of Congress in a criminal investigation, is violative of the Speech or Debate Clause. Unlike the court-fashioned exclusionary rule, the Clause does not only seek to deter future violations, but to bar present ones.

Thus, while this Court was unwilling to fashion a protective order to prevent the grand jury from questioning Mr. Calandra as to the illegally seized evidence, this Court affirmed the use of a protective order to effect the Speech or Debate Clause with respect to Senator Gravel and his aide. *Gravel* v. *United States,* 408 U.S. at 628–629. *Calandra* should not be read to overrule the determination in *Gravel,* but that is the practical effect of the use of *Calandra* as applied to the instant case by the lower courts and urged on this Court by the Department of Justice.

The same Court of Appeals whose ruling is at issue here has had a more recent opportunity to examine the relationship between *Calandra* and the Speech or Debate Clause in a ruling on a claim of legislative privilege for the telephone toll records of a Member of Congress who was the target of a grand jury probe:

> "The exclusionary rule, Justice Powell reasoned [in *Calandra*], is merely a nonconstitutional prophylactic rule aimed at future violations. 414 U.S. at 354. Under the Speech or Debate Clause, however, the constitutional

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> violation is the use of legislative acts against a legislator. Unlike a violation of the Fourth Amendment, which the *Calandra* Court held to be a *past* abuse and thus the lawful basis for subsequent grand jury questioning, it is the very act of questioning that triggers the protections of the Speech or Debate Clause."

In Re: Grand Jury Investigation, No. 78–1755 (3rd Cir., Oct. 20, 1978, *rehearing denied* Jan. 9, 1979), slip op. at 15 (emphasis in original).

Justice Powell in *Calandra* followed Justice Black's lead in *Costello* by reviewing the English antecedents of our grand jury system and its "special role in insuring fair and effective law enforcement." *United States* v. *Calandra, supra* at 343. As was noted in the discussion of *Costello,* the policy reasons for protecting the sanctity of the grand jury process are inapplicable here, and the English precedents demonstrate that the judicial system which gave rise to both the concept of grand juries and the protection of legislative Speech or Debate allow vacating a pre-trial indictment of a legislator based upon evidence of legislative activity. *Ex Parte Wason,* 4 QB 573 (1869). *And see* Part II.B, *infra* at 40.

Contrary to the Department of Justice's contention, adopted by both courts below, that the language used in *Calandra* bars any pre-trial dismissal of an indictment returned by a legally constituted grand jury, there are times when courts will review the evidence relied on by a grand jury in determining whether to dismiss an indictment. Justice Powell, in *Calandra,* relied on the holdings in *Costello* v. *United States* (in-

competent hearsay evidence), *supra,* and *Lawn* v. *United States,* 355 U.S. 339 (Fifth Amendment), to maintain that "the validity of an indictment is not affected by the character of the evidence considered." *United States* v. *Calandra, supra,* at 344–45. While *Calandra* extended the prohibition of looking behind the indictment to include cases arising out of claims based on the Fourth Amendment, it has not served to prevent challenges to the validity of an indictment based on improper use of statutorily immunized testimony, a situation more closely approximating that presented here.

The U.S. Court of Appeals for the Second Circuit has interpreted this Court's ruling in *Kastigar* v. *United States,* 406 U.S. 441 (1972), to place "upon the government a heavy burden of proving that the indictment did not stem from information given to the grand jury [under a grant of transactional immunity.]." *United States* v. *Catalano,* 491 F. 2d 268, 272 (2nd Cir. 1974).

The dictum in *Calandra* has not been read to prevent a court from dismissing an indictment where the court feels the grand jury received evidence tainted by virtue of a grant of statutory immunity. In *United States* v. *Kurzer,* 422 F. Supp. 487 (S.D.N.Y. 1976), the court concluded that, "The government has not met its burden of establishing that . . . Kurzer's indictment did not derive directly or indirectly from his immunized testimony." Having so found, the district court proceeded to dismiss the indictment. *United States* v. *Kurzer, supra* at 490.

Similarly the Second Circuit has maintained that, "When an indictment is the product of the immunized testimony it must be dismissed so far as substantive offenses are concerned." *United States* v. *Anzalone,* 555 F. 2d 317, 319 (2d Cir. 1977).

That Circuit has considered and rejected the contention that the dictum in *Calandra* specifically prevents a pre-trial dismissal of an indictment "tainted" by immunized testimony. *United States* v. *Hinton,* 543 F.2d 1002, 1008 n.7 (2d Cir. 1977). In *Hinton* the court found that, "The alternative of convening a grand jury distinct from that which heard the immunized testimony is not so onerous as to justify the jeopardizing of a defendant's Fifth Amendment rights." *United States* v. *Hinton, supra* at 1010. In the instant case the use of the multiple grand juries afforded the prosecutor an opportunity to meet this burden without any difficulty at all. The prosecutor's decision not to separate out evidence covered by the Speech or Debate Clause, where the ready opportunity existed, should not be condoned. The protections afforded to a person who enjoys a statutory immunity should not be placed on a higher plane than the protections afforded by the specific constitutional grant of immunity contained in the Speech or Debate Clause.

Other circuits faced with a motion to dismiss or quash an indictment on the grounds that it was the product of grand jury use of immunized testimony have refused to do so, not because such improper use

of immunized testimony would not require dismissal, but upon a finding that the government had met its burden of proving independent non-immunized sources of the information presented to the grand jury, *United States* v. *First Western State Bank of Minot,* 491 F.2d 780 (8th Cir. 1974); that the prosecutor should be given a pre-dismissal opportunity to meet the heavy burden of showing that the immunized testimony was not used in any respect, *United States* v. *DeDiego,* 511 F.2d 818 (D.C. Cir. 1975); and that the record was barren as to any proof that the grand jury relied on immunized testimony in voting to return an indictment, *United States* v. *Apfelbaum,* 584 F.2d 1264 (3rd. Cir. 1978).

It has been said that statutory "immunity is generally offered as a device to secure information on criminal activity committed by those in privy with or those acting in concert with the immunized witness." *United States* v. *First Western State Bank of Minot, supra* at 782. Contrasting this purpose with the important constitutional and historical purposes of the Speech or Debate Clause certainly argues for the proposition that the courts should effect the protections of the Clause at least as early in the proceedings as a recepient of statutory immunity is allowed to invoke his protections.

Inherent in the lower courts' treatment of the Speech or Debate aspects of this case, refusing to dismiss the indictment while suppressing the use of protected material at trial and inviting an appeal from a final judgment, *see United States* v. *Helstoski,* 576

F. 2d at 519, is the assumption that the protection of the Speech or Debate Clause does not attach until trial or beyond. Any person even remotely cognizant of the workings of the American political process cannot deny the adverse impact of an indictment on a public official's electoral fortunes. The Speech or Debate Clause was developed in a judicial system which was at the same time developing a system of pre-trial grand jury and magistrate "indictments." [For a discussion of the historical development of the grand jury system, *see Costello* v. *United States, supra,* and *United States* v. *Calandra, supra*]. It is therefore informative to review the English precedents to see at what stage the protections of the Clause attach in the English system.

B. THE ENGLISH PRECEDENTS SUPPORT THE CONTENTION THAT AN INDICTMENT VIOLATIVE OF THE SPEECH OR DEBATE CLAUSE CANNOT STAND.

Ex Parte Wason, 4 QB 573 (1869), has been cited by this Court as indicative of the modern scope of the English Speech or Debate Clause, *United States* v. *Johnson,* 383 U.S. 169, 183; *United States* v. *Brewster,* 408 U.S. at 509 (*see also* dissenting opinions, Brennan and White, JJ., at 539 and 562). *Ex Parte Wason* arose from the refusal of a magistrate, sitting as a pre-trial indicting authority, to issue an indictment of three persons, two of them being Members of Parliament, on the charge that they had conspired to make false statements to Parliament. The magistrate refused to issue the indictment, and the Queen's Bench upheld his refusal, on the basis that an

indictment could not be granted where the petition facially referred to overt acts which were speeches in Parliament. *Ex Parte Wason, supra* at 575 (Cockburn, CJ.). While members of this Court have disagreed as to the precedential value of *Ex Parte Wason, supra,* when it is offered as indicative of the type of activity which is covered by the Speech or Debate Clause, there should be no doubt regarding its value as indicating at what stage of the criminal proceedings the protection attaches. The attacks upon *Wason* are grounded in the fact that the allegedly false speeches were given to a Parliament sitting as a court of impeachment. That distinction is irrelevant for the present usage of *Wason.*

That *Ex Parte Wason* was accepted as support for the proposition that an indictment questioning protective legislative activity was a nullity can be seen by the reliance placed on it by counsel and the court in *Dillon* v. *Balfour,* 20 L.R.Ir. 600 (1887). In seeking pre-trial dismissal of a libel action filed against a member of Parliament, the Attorney-General maintained that the provision in the Bill of Rights concerning freedom of speech and debate "clearly prohibits the bringing of any action for damages on account of speeches in Parliament, and therefore this action cannot lie. *Nor will an indictment lie even for an alleged conspiracy by members of either House of Parliament to make speeches prejudicial to a third person." Dillon* v. *Balfour, supra* at 605 (emphasis added). The pre-trial application of the privilege on

criminal matters was not questioned by the plaintiff and was affirmed by the court, which would not even entertain an amendment of the writ which purported to show an extra-parliamentary repetition of the libel. *Dillon* v. *Balfour, supra* at 619.

The early history of the operation of the English privilege also supports the contention that the privilege attaches at the earliest stage and that any criminal proceeding, even at the accusatory stage, is invalid if it is based on an activity deemed to be protected by the privilege.

The Strode's Act, 4 Hen. VIII, ch. VIII 20 (1512), 3 Stat. 9, 20 (Raithby ed. 1811) (Appendix at 26a), was passed by the Parliament in response to the imprisonment in the dungeon of the castle of Lidford of Richard Strode, a Member of the House of Commons, by a court of special jurisdiction in Steinery on the charge of interferring with the mining of tin, such interference being the introduction of a public law relating to tin mining. This 1512 act is very clear in its application at the initial stages of a criminal proceeding. Thus, Section II of the Act renders "utterly void and of none Effect" all "Acussements," "Grievances" and "Charges . . . put or had unto or upon" Richard or other Members of Parliament. Strode's Act was viewed by Members of Parliament as a significant claim of privilege, not only for Mr. Strode, but for all Members.

There has been some debate over whether Strode's Act was in the nature of a private bill, addressing the

grievances only of Mr. Strode or a public bill meant to have permanent effect. A later clash between the King and Members of Parliament which developed in 1629 provides evidence of the general and permanent effect of Strodes Act. Several members of the House of Commons expressed displeasure with the direction of King Charles I's administration. John Elliot, in a speech to the House of Commons accused the King's Council and Judges with having conspired to "trample under foot the Liberties of the Subjects." 3 How. St. Tr. 294 (1809 ed.). He warned that the King had sent instructions to the Speaker of the House of Commons to adjourn the session, by taking leave of the chair. Elliot, and several others forcibly restrained the Speaker and continued to lambast the royal administration. *Id.*

For the effrontery of their positions the King through his Attorney-General brought an indictment against Elliot and the others charging an illegal conspiracy to detain the Speaker in the chair, making of improper speeches and contempt of the King. After an initial proceeding, later dropped, in the Star Chamber, the Attorney-General presented the indictment to the King's Bench.

The defendants sought dismissal on a number of grounds, the most relevant of which was their claim that any indictment was null and void since the court was without jurisdiction to hear allegations of parliamentary misconduct. Defendants relied on the general privilege of free speech in Parliament and specifically cited the Strode's Act as supporting their contention.

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The Attorney-General countered this assertion by claiming that Strode's Act was a private act, designed solely to redress the grievances of Parliament in that particular matter. The defendants in their argument to the King's Bench offered the following evidence of the permanent effect of Strode's Act.

King Henry VIII, in formally answering the Parliament's presentation of Strode's Act in 1512, did so by invoking the form used in answering public acts *"Le roy voit"* [*The King wills it*] and not with the form used in answering a private act *"Soit droit fait al partyes"* [Let right be done to the party], *Proceedings Against Sir John Elliot, et al.,* 3 How. St. Tr. 294, 297 (1629) (argument of Mr. Mason on behalf of Sir John Elliot) (*See* Appendix at 1a). Moreover, the Act is enrolled with other public laws passed in that Parliament, and not with the separate collection of private acts. *See A Table Containing the Titles of all The Statutes, Publick and Private From the First Year of King Henry VIII to the Seventh Year of King Edward VI,* 3 Stat., *supra* at iii (Appendix at 23a).

While the Justices of the King's Bench agreed at that time with the argument advanced by Sir Robert Heath, the King's Attorney-General, that Strode's Act was of no general or permanent effect, *Proceedings Against Sir John Elliot, et al.,* 3 How. St. Tr. 294, this holding was later repudiated by specific actions of the Parliament. Thus on July 6, 1641 it was resolved that the actions taken against the Members of the House constituted a breach of the privilege of

Parliament, and the House specifically found that the showing of any information charging a Member with a crime based on his activity within Parliament was a breach of the privilege. 3 How. St. Tr. at 310.

Twenty-six years later, during the reign of King Charles II, this matter was once again addressed by Parliament. On November 12, 1669 the House of Commons, acting upon a report from the committee concerning Freedom of Speech in Parliament, resolved:

> "That the house do agree with the committee, That the act of Parliament in 4 Hen. 88, commonly entitled, An Act concerning Richard Strode, is a general law, extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters, in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament."

3 How. St. Tr. 294, 314–15 (actions of parliament included by editors as an appendix to King's Bench decision in *Proceedings Against Sir John Elliot, et al.*). The House of Lords concurred in the actions taken by the Commons, 12 H.L. Jour. 224 (1668) (Appendix at 29a).

More recently, a Select Committee on Parliamentary Privilege formed by the House of Commons in 1966, having reviewed the long and arduous history of the English privilege, commented on what would occur if a member were sued in court "for defama-

tory or other wrongful statements made during a debate or 'proceeding in Parliament'. If such an action were brought, the writ would be summarily struck out if it were apparent from it that the occasion was a proceeding in Parliament. If the writ itself did not make this apparent, the action would be dismissed as soon as the fact became apparent." *Report from the Select Committee on Parliamentary Privilege,* 12 HOUSE OF COMMONS SESSIONAL PAPERS FROM COMMITTEES 143, xxiii (1967–1968).

This finding by the Select Committee was supported by the testimony of Mr. L. A. Abraham, C.B., C.B.E., former Principal Clerk of Committees, House of Commons, who testified that not only could a Member have a writ which improperly questions a Member's legislative acts struck as an abuse of process but could in fact treat the issuance of the writ as a contempt of parliamentary privilege and have the individuals involved in the issuance of the writ committed by the House of Parliament to prison. *Report from the Select Committee, supra* at 114. In fact, it is on this last point that current debate concerning parliamentary privilege now centers, not whether such a suit or indictment can be maintained in the courts, but whether or not the issuance of such a writ is a contempt of Parliament. *Report from the Select Committee, supra.*

This review of the English experience, upon which American courts have heavily relied in interpreting the scope of the Speech or Debate Clause, reveals that it is considered essential, to preserve the free-

dom of debate in Parliament, for the courts to recognize that privilege, in matters it rightfully applies to, by acting as quickly as possible to dismiss the action. Our own legislators deserve the same protection and an indictment, which on its face is the product of a grand jury which has received testimony as to legislative acts, is fatally defective.

III. THE DECISION OF THE APPEALS COURT PROHIBITING THE INTRODUCTION OF LEGISLATIVE ACTS AT TRIAL REGARDLESS OF THE PURPOSE SOUGHT TO BE ACHIEVED BY SUCH PROOF SHOULD BE AFFIRMED.

In the proceedings below, the United States Court of Appeals for the Third Circuit affirmed the district court's ruling on the inadmissability of proof of legislative acts on the part of Congressman Helstoski derived from any source and for any purpose during the presentation of the case-in-chief. *United States* v. *Helstoski,* 576 F. 2d 511, 521–522 (3rd Cir. 1978).

In both the district court and the Court of Appeals the prosecution sought a ruling to permit it "to introduce copies of private immigration bills themselves and correspondence and conversations referring to defendants legislative acts in order to prove the purpose of defendant in accepting the payments at issue." *Id.* The Department of Justice believes here, as it did below, that if it seeks merely to introduce the legislative acts to prove state of mind and guilty knowledge in allegedly taking a bribe, there is no conflict with the Speech or Debate Clause, as interpreted in *Brewster* and *Johnson,* because there is no inquiry, as a result

of proof of legislative acts for that purpose, into the legislative process itself. Pet. for Cert., No. 78-349 at 15.

The Court of Appeals rejected this argument and stated:

> "It is true that *Brewster* did not foreclose the showing of the purpose in taking the bribe. But the Supreme Court in *Brewster* made clear that such purpose could be shown without inquiry 'into how [defendant] spoke, how he debated, how he voted, or anything he did in the chamber or in committee.'" *United States* v. *Helstoski,* 576 F. 2d at 522, *quoting United States* v. *Brewster,* 408 U.S. 501, 526 (1972).

At the nub of this case is an attempt by the Department to reduce the Speech or Debate Clause to an empty and meaningless platitude deprived of the vitality with which it is intended to function. The notion that by merely professing a desire to introduce evidence of legislative conduct for what the prosecution feels is a legitimate purpose is antithetical to this Court's characterization of the Clause as an absolute bar to the "questioning" of Members once those acts are determined to be within the ambit of the Clause's protection, *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 503 (1975). The pronouncement by this Court of the kind of holding the Department seeks presents the prospect that judicially constructed exceptions to the Clause will in time entirely swallow the rule that prohibits " 'any showing' of legislative acts," *United States* v. *Helstoski,* 576 F. 2d at 522, *quoting United States* v. *Brewster,* 408 U.S. at 527.

An element of almost every crime is the proof of guilty knowledge on the part of the accused. To permit the Department to offer legislative acts into evidence to demonstrate "state of mind," with any reference to the actual performance of the legislative act being purely "incidental", would render the Clause a nullity, allowing a legislator to be tried partially on the basis of his legislative acts, whether it be bribery, conflict of interest or any other federal criminal statute. The Clause would, under this theory, be reserved as a protection only in the unlikely eventuality that prosecutors would put themselves in a position of directly charging legislative acts.

The Department of Justice recognizes, as it must, that "prosecution of a Member of Congress under 18 U.S.C. § 201 does not require proof of the *legislative act itself.*" Brief for Appellant at 20, *United States* v. *Helstoski, supra* (emphasis added). The Department goes on immediately thereafter to quote in support of its conclusion language in *United States v. Brewster,* 408 U.S. at 526:

> "The illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that [the defendant Member of Congress] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."

Amici is puzzled as to the reasons why the Department insists it must nevertheless be enabled to introduce copies of bills and correspondence containing references to the bills into evidence when it con-

cedes that the statute does not require a showing of performance of the illegal bargain to prove the crime.

Under the bribery statute, "[t]o sustain a conviction, it is necessary to show that Appellee solicited, received or agreed to receive money with knowledge that the donor was paying him compensation for an official act. Inquiry into legislative performance is not necessary; evidence of the Member's knowledge of the alleged bribers' illicit reasons for paying the money is sufficient to carry the case to the jury." 408 U.S. at 527.

Again it is not necessary to show performance, yet this is what the Department urges apparently to make its prosecutions more compelling.

"Perhaps the Government would make a more appealing case if it could [introduce legislative acts] but . . . evidence of acts protected by the Clause is inadmissable." 408 U.S. at 528. Likewise the desire of the Department to make an appealing case does not overcome the clear and unequivocal effect of the Clause. If, as the Department suggests, in "cases such as the present case, where an administrative aide makes initial contact with the potential briber, and the Congressman deals with the briber only after the performance of the legislative act in order to demand or receive payment, there may be insufficient evidence arising before the legislative act to establish that the Congressman was a knowing participant in the scheme", Pet. for Cert., No. 78–349 at 14, then the Department has other alternatives than to violate the Clause: (1) it must rely on the evidence which is

available *and* admissable; (2) it must more diligently pursue the existence of such evidence before trial, or if this fails; (3) it must forego the small number of prosecutions which necessitate use of such evidence, particularly since bribery prosecutions of Congressman, by the Department's own admission, are "not commonplace occurrences."[9]

The particular legislative acts themselves and the correspondence and conversations referring to the legislative acts involved in this case relate to the introduction by Congressman Helstoski, and consideration by the House, of so-called "private" immigration bills. *Amici* believes that it is necessary for the Court to have before it a brief explanation of the procedures and rules governing these bills for purposes of establishing that their consideration and enactment by the House is an integral and regular part of the legislative process.

Although the "Government here concedes that Helstoski's introduction of private immigration bills constituted legislative acts," *United States* v. *Helstoski,* No. 76–201 (D. N.J., Feb. 22, 1977) (unpublished opinion), it later characterizes the case as one charging the Congressman "with having solicited and received bribes in return for the introduction of pri-

[9] The Department has stated that the Third Circuit's ruling "will make it impossible to obtain convictions in this category of cases." Pet. for Cert, No. 78–349 at 14. Again, *amici* question why the Department is intent on going to the lengths it has in bringing issues before the Court which it concedes are relevant to a very select category of cases and which involve countervailing considerations of constitutional immunity.

vate immigration bills on behalf of specified aliens residing illegally in the United States." Pet. for Cert., No. 78–546 at 2.

In recent years, the subject of illegal aliens residing in this country has become the focus of public debate and controversy and the various social and economic factors that relate to the problem is one of considerable concern to both the Congress and the citizenry. *See generally*: ILLEGAL ALIENS: ANALYSIS AND BACKGROUND, Comm. on the Judiciary, 95th Cong., 1st Sess. (Comm. Print No. 5, 1977) and *Illegal Aliens: Hearings Before the Subcomm. No. 1 of the House Comm. on the Judiciary,* 92d Cong., 1st & 2d Sess., Parts 1–5 (1971–1972).

Against this background, an allegation that a Congressman was involved in a corrupt scheme purportedly resulting in his direct pecuniary advantage in connection with private immigration legislation for a number of years adds to the already highly charged atmosphere in which the issues in such as case will be decided. In order to rebut, in anticipation, any negative connotation which might be drawn from the Department's statement that the legislative activity which occurred here related to private immigration bills, the beneficiaries of whom were illegal aliens, and to insure that any adverse rulings on the points at issue in this case do not result from permitting an erroneous impression to stand regarding the regularity and propriety of private legislation, *amici* wish to provide relevant information to the Court on this aspect of the Article I, §1 legislative power.

The power to regulate the entry and stay of aliens, as well as the process through which aliens become naturalized citizens, has traditionally been viewed as an inherent incident of national sovereignty committed exclusively to national control. "It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekin* v. *United States,* 142 U.S. 651, 659 (1892). See also *The Chinese Exclusion Case,* 130 U.S. 581, 603–604 (1889); *United States ex rel. Knauf* v. *Shaughnessy,* 338 U.S. 537, 542, (1950); *Carlson* v. *Landon,* 342 U.S. 524, 537 (1952); *Boutilier* v. *Immigration and Naturalization Service,* 387 U.S. 118, 123 (1967); *Kleindienst* v. *Mandel,* 408 U.S. 753, 762 (1973).

Coupled with this inherent and sovereign power possessed by the Congress to regulate the entry, stay and deportation of aliens, is the express power conferred on Congress "[t]o establish a uniform Rule of Naturalization." U.S. Const., art. I, § 8, cl. 4. It is for the purpose of carrying into execution such powers that Congress was additionally given the authority to "make all laws which shall be necessary and proper." *Id.* at cl. 18.

In introducing, considering and passing private immigration bills, the House, and the Congress, draw upon both these inherent and express constitutional sources.

With respect to their consideration in the House, the Committee on the Judiciary is given jurisdiction over immigration and naturalization and measures relating to claims against the United States. H.R. Rule X(m)(7) and (10), Rules of the House, § 682 (a) at 379. All such bills of private character are referred to the Private Calendar, one of the three basic calendars to which all business reported from committees is referred. Rule XIII, § 1, Rules of the House § 742 at 481.

It should be noted that the use of the term private bills is one of legislative nomenclature which distinguishes bills for the relief of one or more specified persons, corporations or institutions from bills which deal with individuals only by classes. 4 A. Hinds' *Precedents of the House of Representatives,* § 3285 at 247 (1907).

> "The line of distinction between public and private bills is so difficult to be defined in many cases that it must rest on the opinion of the Speaker and the details of the bill . . . . To be a private bill it must not be general in its enactments, but for the particular interest or benefit of a person or persons. A pension bill for the relief of a soldier's widow is a private bill, but a bill granting pensions to such persons as a class . . . is a public bill." *Id.*

Questions of classification are resolved through reference to long established and time honored standards. Therefore, a bill providing for the collection of tolls by certain individuals generally from the public, but which also provided for the punishment of individuals

in the courts was classed a public bill, 4 A. Hinds' *Precedents, supra* § 3286 at 249. *See also* 7 C. Cannon's *Precedents,* § 864 at 56–57 (1936).

Private bills referred to the Private Calendar are called on the first and third Tuesdays of each month and if objection is made by two or more Members to the consideration of any measure so called, it is recommitted to the reporting committee. Zinn, *How Our Laws Are Made,* H.R. Doc. No. 94–509, 94th Cong., 2d Sess. 21 (1976).

During the Ninety-Fifth Congress a total of 908 private bills and resolutions were referred to the Committee on the Judiciary, 546 of which related to private immigration and nationality, and in all 161 private bills were enacted into law. Report on the Activities of the Judiciary Comm. Pursuant to Clause 1(d) Rule XI of the Rules of the House of Representatives, H.R. Rep. No. 95–1827, 95th Cong., 2d Sess. 5–6 (1978). In addition, the Subcommittee on Immigration, Citizenship and International Law of the House Committee on the Judiciary held 13 meetings on private immigration and nationality bills. *Id.* at 20.

While the foregoing precedents, rules and procedures are not directly at issue here, any modification of the Third Circuit's ruling on the admissability of private bills would have the same effect with respect to the much larger number of public bills introduced in and considered by the House. Since the House considers private bills in much the same manner that public bills are treated, with the minor differences

noted in this brief discussion, reversal of the Third Circuit's holding on the admissability of the bills would have far ranging impact not only on the Member's Speech or Debate Clause protection but on the legislative process in general. Were Members to respond to any such ruling by declining to introduce much needed or innovative legislation for fear of being "questioned" for those acts by the Executive, the legislative process as we now know it is likely to become drastically curtailed and stifled.

In addition, it should be noted that the correspondence to the beneficiaries of the private immigration bills falls into a different category than the " 'newsletters' to constituents, news releases and speeches delivered outside Congress" which the Court in *Brewster,* 408 U.S., at 512 indicated were not pure protected legislative activities. These letters are more in the nature of legislative communications closely akin to, for example, a letter from the Chairman of the Armed Services Committee to the Secretary of the Department of Defense relating to military authorizations for the armed forces. Moreover, letters to beneficiaries of private bills by the sponsoring Member regarding their introduction or action thereon by committee or the House can hardly be classed, along with newsletters or speeches, as a "means of developing continuing support for future elections," *id.,* since none of the beneficiaries would be capable, as aliens, of voting or otherwise participating in the elective process. *See for example*: 2 U.S.C. § 441e(a),

prohibiting foreign nationals from making financial contributions to political campaigns.

Moreover, as has been outlined earlier, the introduction and passage of private immigration bills is an exercise of express constitutional authority conferred on Congress. Therefore, the introduction of those bills and correspondence to beneficiaries concerning those bills necessary to foster informed consideration by the House are clearly acts "generally done in a session of the House by one of its Members in relation to the business before it," *Kilbourn* v. *Thompson,* 103 U.S. 168 (1881) or things "said or done by him, as a representative, in the exercise of the functions of that office," *Coffin* v. *Coffin,* 4 Mass. 1, 27 (1808).

The assertion by the Department that a Member may be accountable for telling people outside Congress why he spoke and voted as he did, Pet. for Cert., No. 78–349 at 20, *citing* Reinstein and Silverglate, *Legislative Privilege and the Separation of Powers,* 86 Harv. L. Rev. 1113, 1163 (1973), is inapposite to the situation here, where the persons being informed by the Member of legislative action on their behalf had an interest above and beyond the general public interest which constituents have in the activities of a Congressman. In fact, it is not clear through what channel the beneficiaries would obtain knowledge of the activities of the House on the bills of which they were beneficiaries other than through the sponsoring Member acting as liaison.

IV. THE PROTECTION OF ARTICLE I, SECTION 6, OF THE UNITED STATES CONSTITUTION—THE SPEECH OR DEBATE CLAUSE—CANNOT BE WAIVED; ANY JUDICIALLY FASHIONED DOCTRINE OF WAIVER SHOULD BE A STRICTLY LIMITED AND PRECISELY DEFINED ONE.

In the almost 200 years since the Speech or Debate Clause came into existence in its present form, *amici* are unaware of any court—State or Federal—which has held that the Constitutional prohibition against "questioning" a Member of Congress about his legislative acts is merely a personal privilege which can be waived and that failure to object on one occasion of its violation causes the protection to disappear on all future occasions when either the Executive or Judicial Branches—or both in combination—wish to repeat their inquiries into what a legislator has done, *qua* legislator, and his motives for so doing. Nor have the British courts developed such a doctrine over the many centuries preceding and following the express statement of a Speech and Debate protection for Members of Parliament in the English Bill of Rights of 1688.[10]

[10] 1 W. & M., Sess. 2, c. 2. The English Bill of Rights' Speech and Debate Clause declares "that the Freedom of Speech and Debate or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament." This language was almost exactly adopted in Article V of the Articles of Confederation: "freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress * * *." Article I, Section 6 of the Constitution, of course, reads: "* * * and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place."

The reason for this lack of any "waiver" gloss concerning the Speech or Debate protection is fundamental and stems from the unique purpose of the Clause to preserve and foster the complete separation and independence of the Legislative Branch, insofar as purely legislative acts are concerned, from its sisters, the Executive and Judicial. The protection afforded is not merely personal (as, *for example,* the Fifth Amendment privilege against *self*-incrimination), nor is it fundamentally an evidentiary privilege designed to preserve valuable confidential relationships (*for example,* husband-wife, attorney-client, physician-patient, priest-penitent). *See* District Judge Meanor's opinion below, Pet. for Cert., No. 78–349, at 51a–58a.

Amici respectfully submit that the Speech or Debate prohibition—or privilege, if you will—is more institutional than personal, and its breach impinges at least as much upon the domain of the Congress as a body as it does upon the individual member who is being subjected to inquisition. As this Court stated in *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 503 (1975):

> "* * * once it is determined that members are acting within the 'legitimate legislative sphere' the Speech or Debate Clause is an *absolute bar* to interference." (Emphasis added.)

The prohibition thus being absolute, and expressly stated in the body of the Constitution, it is clearly more in the nature of a flat jurisdictional bar on the powers of the Executive and Judicial Branches of the

Government than it is a personal privilege that can be waived by an individual Member of Congress. Certainly it can not be contended that either the President, or this Court, or that Congress as a body can "waive" the separation of governmental powers which the Constitution itself decrees. How, then, can an individual Member of Congress do so on his own? Just as parties to a law suit before this Court can not by agreement or "waiver" confer jurisdiction on the Court to act where Article III prohibits such action,[11] so also former Representative Helstoski, as a party to this law suit, can not by his actions alone confer power on the Department of Justice or the District Court below to inquire into matters which the Constitution states that the Executive and Judiciary shall not inquire into.

For these reasons, *amici* respectfully submit that the prohibition of Article I, Section 6 of the Constitution, i.e., the Speech or Debate Clause, on the powers of the Executive and Judicial Branches of the Government is not waiveable either by an individual Member of Congress acting alone, or by such individual Member acting in conjunction with the House of which he is a Member, or by such individual acting

[11] Neither, of course, can Congress and the President confer such jurisdiction on this Court. *Marbury* v. *Madison*, 1 Cranch 137 (1803).

in conjunction with the Congress.[12] In short, the answer to the second Question posed in the Department of Justice's petition for a writ of certiorari in No. 78–349, at 2, should be answered in the negative.[13]

Should this Court, however, decide to go down the road of erosion by fashioning at this late date a doctrine of waiver concerning the Speech or Debate Clause, as the Department of Justice now urges, *amici* respectfully suggest that, in deference to the fundamental policy underlying the Clause of protecting the separation and independence of the national Legislature from a possibly hostile Executive or Judiciary, any such doctrine of waiver should be a strict and precisely limited one. Thus, if the protection is waiveable at all, it should be only under the following con-

[12] It is true, of course, that a violation of the Speech or Debate prohibition may be triggered by the combination of a failure to object on the part of an individual Congressman and a lack of self-restraint on the part of a prosecutor or private plaintiff in a law suit. Thus, this Court has said that legislators are not "absolved of the responsibility of filing a motion to dismiss" should they be sued on the basis of their legislative acts. *Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491, 511 n. 17 (1975), *quoting Powell* v. *McCormack*, 395 U.S. 486, 505 n. 25 (1969). But such an inadvertent, unapposed transgression by one Branch on the domain of another Branch, while regrettable, is not of Constitutional significance. It is sufficient to remedy the transgression when objection is raised.

[13] The Question Presented is as follows: "2. Whether the voluntary giving of testimony and production of documents before a grand jury by a Congressman who is aware of but does not invoke the Speech or Debate Clause privilege constitutes a waiver of that privilege with respect to use of those documents and that testimony at the trial of an indictment returned by the grand jury, when there has been no express authorization by the Congressman of such use."

ditions (some but not all of which were referred to by the courts below in rejecting the claim of waiver in this case):

1. Any waiver should be an express waiver of the Speech or Debate protection after due warning of its possible application. Both courts below so ruled.

2. Any waiver should require the concurrent acquiessence of both the individual Member of Congress and of Congress itself; or at least of the House to which the Member belongs.

3. Any waiver should apply only to the proceedings at which the waiver is made, e.g., a waiver at an administrative agency hearing or before an Executive department or officer should not constitute a waiver in a subsequent private civil suit. Similarly, a waiver before one grand jury should not constitute a waiver before a different or subsequent grand jury or for purposes of a subsequent trial before a petit jury or judge. Here, for example, at least nine separate grand juries were investigating Congressman Helstoski's activities. He appeared before some of these and testified, without objection, as to some of his legislative actions. But no grand jury before which he testified indicted him. And he did not appear or testify before the grand jury that returned the indictment that initiated this case.[14] It is therefore submitted that any waiver, arguably committed by Congressman Helstoski

[14] The phrasing of the Department of Justice's Question No. 2 in its petition for a writ of certiorari in No. 78-349, at 2, to the extent that it implies otherwise, is in error.

at his earlier appearances before other grand juries that did not indict him, should not be deemed to spill over and apply to this case.

CONCLUSION

In conclusion, *Amici* asks the Court to consider the views and authorities presented herein in formulating its opinion and judgment in this case.

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February 8, 1979

190. Proceedings against Sir JOHN ELLIOT, DENZIL HOLLIS, esq. and BENJAMIN VALENTINE, esq. for seditious Speeches in Parliament: in B. R. Mich. 5 CHARLES I. A. D. 1629.*

SIR Robert Heath, the king's Attorney-General, exhibited informations in this court against sir John Elliot, knight, Denzil Hollis, and Benjamin Valentine, esqrs. the effect of which was,† That the king that now is, for weighty causes, such a day and year, did summon a parliament, and to that purpose sent his writ to the sheriff of Cornwall to chuse two knights: by virtue whereof sir John Elliot was chosen and returned knight for Cornwall. And that in the same manner, the other defendants were elected burgesses of other places, for the same parliament. And shewed further, that sir John Finch was chosen for one of the citizens of Canterbury, and was Speaker of the house of commons. And that the said Elliot publicly and maliciously in the house of commons, to raise sedition between the king, his nobles, and people, uttered these words, 'That 'the Council and Judges had all conspired to 'trample under foot the Liberties of the Sub-'jects.' He further shewed, that the king had power to call, adjourn, and dissolve parliaments: and that the king, for divers reasons, had a purpose to have the house of commons adjourned, and gave direction to sir John Finch, then the Speaker, to move an adjournment; and if it should not be obeyed, that he should forthwith come from the house to the king. And that the Defendants, by confederacy aforehand, spake a long and continued speech, which was recited *verbatim*, in which were divers malicious and seditious words, of dangerous consequence. And to the intent that they might not be prevented of uttering their premeditate speeches, their intention was, that the Speaker should not go out of the Chair till they had spoken them; the Defendants, Hollis and Valentine, laid violent hands upon the Speaker, to the great affrightment and disturbance of the house. And the Speaker being got out of the Chair, they by violence set him in the Chair again; so that there was a great tumult in the house. And after the said speeches pronounced by sir John Elliot, Hollis did recapitulate them.

And to this Information,

The Defendants put in a Plea to the Jurisdiction of the court, because 'these offences 'are supposed to be done in parliament, and 'ought not to be punished in this court, or in 'any other, but in parliament.'

And the Attorney-General moved the Court, to over-rule the plea to the jurisdiction. And that, he said, the court might do, although he had not demurred upon the plea. But the court would not over-rule the plea, but gave day to join in demurrer this term. And on the first day of the next term, the record shall be read, and within a day after shall be argued at bar.

Hyde, Chief-Justice, said to the counsel of the Defendants; So far light we will give you: this is no new question, but all the Judges in England, and Barons of the Exchequer, before now, have oft been assembled on this occasion, and have, with great patience, heard the arguments on both sides; and it was resolved by them all with one voice, That an offence committed in parliament, criminally or contemptuously, the parliament being ended, rests punishable in another court.

Jones. It is true, that we all resolved, That an offence committed in parliament against the crown, is punishable after the parliament in another court; and what court shall that be, but the court of the King's-bench, in which the king, by intendment, sitteth?

Whitlocke. The question is now reduced to a

* The king at first intended to proceed against the above gentlemen in the Star-Chamber, to which end an Information was exhibited against them in that court, on the 7th of May; but that being dropped, they were proceeded against in the King's-bench, and the same matters in effect were set forth as in the Information in the Star-Chamber.

† See the Information in the King's-bench, the Defendant's Plea, the Attorney-General's Demurrer, &c. at large, at the end of the Case, upon occasion of the Reversion of the Judgment in B. R. by the House of Lords on a Writ of Error, A. D. 1668.

narrow room, for all the Judges are agreed, That an offence committed in parliament against the king or his government, may be punished out of parliament. So that the sole doubt which now remains, is, whether this court can punish it.

Croke agreed, That so it had been resolved by all the Judges, because otherwise there would be a failure of justice. And by him, if such an offence be punishable in another court, what court shall punish it but this court, which is the highest court in the realm for criminal offences? And perhaps not only criminal actions committed in parliament are punishable here, but civil also.

Mr. *Mason* of Lincoln's-Inn argued for sir John Eliot, one of the Defendants. The charges in the Information against him are three:

1. For Speeches.

2. For Contempts to the King, in resisting the Adjournment.

3. For Conspiracy with the other Defendants, to detain Mr. Speaker in the Chair.

In the discussion of these matters, he argued much to the same intent he had argued before, therefore his argument is reported here very briefly.

1. For his Speeches, they contain matter of accusation against some great peers of the realm; and as to them, he said, that the king cannot take notice of them. The Parliament is a Council, and the Grand Council of the king; and councils are secret and close, none other have access to those councils of parliament, and they themselves ought not to impart them without the consent of the whole house. A Jury in a leet, which is sworn to inquire of offences within the said jurisdiction, are sworn to keep their own counsel; so the house of commons inquire of all grievances within the kingdom, and their counsels are not to be revealed. And to this purpose was a Petition, 2 H. 4, n. 10. That the king shall not give credit to any private reports of their proceedings, to which the king assents: therefore the king ought not to give credit to the information or these offences in this case. 2. The words themselves contain several accusations of great men; and the liberty of accusation hath always been parliamentary. 50 E. 3. Parliament Roll, n. 21, the lord Latimer was impeached in parliament for sundry offences. 11 R. 2, the archbishop of York; 13 H. 6, n. 18, the duke of Suffolk; 1 Mar. Dy. 93, the duke of Norfolk; 36 H. 6, n. 60, un Vickar General; 2 and 3 E. 6, c. 18. the lord Seymour; 18 of king James, the lord of St. Albans, Chancellor of England; and 21 of king James, Cranfield, Lord Treasurer; and 1 Car. the duke of Buckingham. 3. This is a privilege of parliament, which is determinable in parliament, and not elsewhere; 11 R. 2, n. 7. the Parliament Roll, a Petition exhibited in parliament, and allowed by the king. That the liberties and privileges of parliament shall only be discussed there, and not in other courts, nor by the common, nor civil law; (see this Case more at large in Selden's Notes upon Fortescue, f. 42.) 11 R. 2, Roll of the process and judgment. An appeal of Treason was exhibited against the archbishop of Canterbury and others, and that the advice of the sages of the one law and the other being required; but because the appeal concerned persons which are peers of the realm which are not tried elsewhere than in parliament, and not in an inferior court. 28 H. 4, 18. There being a question in parliament concerning precedency, between the earl of Arundel, and the earl of Devon, the opinion of the Judges being demanded, they answered, That this question ought to be determined by the parliament, and by no other. 31 H. 6, n. 26. During the prorogation of the parliament Thorp that was the Speaker, was out in execution at the suit of the duke of York; and upon the re-assembly of the parliament, the commons made suit to the king and lords to have the Speaker delivered. Upon this, the lords demanded the opinion of the Judges; who answered That they ought not to determine the privileges of the high court of parliament. 4. This accusation in parliament is in legal course of justice, and therefore the accuser shall never be impeached, 13 H. 7, and 11 Eliz. Dy. 285. For making of false deeds brought against a peer of the realm, action *de scandalis magnatum*, doth not lie. Coke's Rep. 4. 14, Cutler and Dixy's case, where divers cases are likewise put to this purpose. 35 H. 6, 15. If upon the view of the body the slayer cannot be found, the Coroner ought to enquire, Who first found the dead body? And if the first finder accuse another of the murder, that is afterward acquit, he shall not have an action upon the case, for it was done in legal manner. So it is the duty of the commons to enquire of the Grievances of the Subjects, and the causes thereof, and doing it in legal manner, 19 H. 6, 19. 8 H. 4, 6. in conspiracy it is a good plea, that he was one of three victors. And 20 H. 6, 5. that he was a good Jury-man, and informed his companions. And 21 E. 4, 6, 7. and 35 H. 6, 14. that he was Justice of Peace, and informed the Jury, 27 Ass. p. 12. is to the same purpose. And if a Justice of Peace, the first finder, a juror, or indicter shall not be punished in such cases; *à fortiori* a member of the house of commons shall not who, as 1 H. 7, is a Judge. 27 Ass. p. 44, it be objected, where two were indicted of a conspiracy, because they maintained one another but the reason of the said case was, because maintenance is a matter forbidden by the law but parliamentary accusation, which is our matter, is not forbidden by any law. Coke's 9. 56. there was a conspiracy, in procuring one to be indicted. And it is true, for there it was not his duty to prefer such accusation. (2) The accusation was extra-judicial, and out of court but it was not so in our case. (3) Words spoken in parliament, which is a superior court, cannot be questioned in this court, which is inferior 3 E. 3, 19. and Stamford 153, will be objected where the bishop of Winchester was arraigned in this court, because he departed the parliament without licence; there is but the opinion

of Scroop, and the case was entered, P. 3 E. 19. And it is to be observed, that the plea of the bishop there, was never over-ruled. From this I gather, that Scroop was not constant to his opinion, which was sudden, being in the same term in which the plea was entered; or if he were, yet the other Judges agree not with him; and also at last the bishop was discharged by the king's writ. From this I gather, that the opinion of the court was against the king, as in P. 20. in Fogassa's case, where the opinion of the court was against the king, the party was discharged by privy seal. 1 and 2 Phil. and Mar. hath been objected, where an information in this court was preferred against Mr. Plowden, and other members of the house of commons, for departing from the house without licence. But in that case I observe these matters. (1) That this information depended during all the life of the queen, and at last was *sine die*, by the death of the queen. (2) In the said case, no plea was made to the jurisdiction of the court, as here it is. (3) Some of them submitted themselves to the fine, because it was easy, for it was but 53*s.* 4*d.* But this cannot be urged as a precedent, because it never came in judgment, and no opinion of the court was delivered therein. And it is no argument, that because at that time they would not plead to the jurisdiction, therefore we now cannot if we would. (4) These offences were not done in the parliament house, but elsewhere by their absence, of which the country may take notice: but not of our matters done in parliament. And absence from parliament, is an offence against the king's summons to parliament. 20 R. 2, Parliament Roll 12. Thomas Hacksey was indicted of high treason in this court, for preferring Petition in parliament; but 1 H. 4, n. 90. he preferred a Petition to have this judgment quashed, and so it was, although the king had pardoned him before. And 1 H. 4. n. 104. all the commons made petition to the same purpose, because this tends to the destruction of their privileges. And this was likewise granted. 4 H. 8, c. 8, Strode's case, That all condemnations imposed upon one, for preferring of any Bill, speaking, or reasoning in parliament, are void. And this hath always been conceived to be a general act, because the prayers, time, words, and persons are general, and the answer is as in general; for a general act is always answered with, *Le roy voit*, and a particular act with *Soit droit fait al partyes*. And 33 H. 6, 17. 18. a general act is always inrolled, and so then is.

2. For the second matter, the Contempt to the command of the adjournment, Jac. 18. it was questioned in parliament, whether the king can adjourn the parliament, (although it be without doubt that the king can prorogue it). And the Judges resolve, that the king may adjourn the house by commission: and 27 Eliz. it was resolved accordingly. But it is to be observed, that none was then impeached for moving that question. (2.) It is to be observed, that they resolve, that the adjournment may be by commission, but not resolved that it may be by a verbal command, signified by another; and it derogates not from the king's prerogative, that he cannot so do, no more than in the case of 26 H. 8, 8. that he cannot grant one acre of land by parol. The king himself may adjourn the house in person, or under the great seal, but not by verbal message, for none is bound to give credit to such message; but when it is under the Great Seal, it is *teste meipso*. And if there was no command, then there can be no contempt in the disobedience of that command. (3) In this, no contempt appears by the information; for the information is, that the king had power to adjourn parliaments. Then put the case, the command be, that they should adjourn themselves: this is no pursuance of the power which he is supposed to have. The house may be adjourned two ways, to wit, by the king, or by the house itself: the last is their own voluntary act, which the king cannot compel, for, 'Voluntas non cogitur.'

3. For the third matter, which is the Conspiracy: although this be supposed to be out of the house, yet the act is legal; for members of the house may advise of matters out of the house: for the house itself is not so much for consultations, as for proposition of them. And 20 H. 6, 34. is, that inquests which are sworn for the king, may enquire of matters elsewhere. (2) For the Conspiracy to lay violent hands upon the Speaker, to keep him in the Chair; the house hath privilege to detain him in the Chair, and it was but lightly and softly, and other Speakers have been so served. (3) The king cannot prefer an information for trespass; for it is said, the king ought to be informed by a jury, to wit, by indictment, or presentment. (4) This cannot be any contempt, because it appears not that the house was adjourned; and if so, then the Speaker ought to remain in the chair; for without him, the house cannot be adjourned. But it may be objected, that the information is, That all these matters were done maliciously and seditiously. But to this I answer, That this is always to be understood according to the subject matter, 15 E. 4, 4. and 18 H. 8, 5. A wife that hath title to have dower, agrees with another to enter, (which hath right) that she against him may recover her dower. This shall not be called Covin, because both the parties have right and titles. (2) It will be objected, That if these matters shall not be punishable here; they shall be unpunished altogether, because the parliament is determined. To this I say, That they may be punished in the subsequent parliament, and so there shall be no failure of right. And many times matters in one parliament have been continued to another, as 4 E. 3, n. 16. the lord Berkley's Case, 50 E. 3 n. 185. 21 R. 2, c. 16. 6 H. 6, n. 45, 46. 8 H. 5, n. 12, offence in the forest ought to be punished in eyre, and eyres oftentimes were not held but every third year. C. 9. Epistle. and 36 E. 3. c. 10. A parliament may be every year. Error in this court

cannot be reversed but in parliament, and yet it was never objected, that therefore there shall be a failure of right. 25 E. 3, c. 2. If a new case of treason happen, which is doubtful, it shall not be determined till the next parliament. So in Westm. 2, c. 28. where a new case happens, in which there is no writ, stay shall be made till the next parliament. And yet in these cases, there is no failure of right. And so the judges have always done in all difficult cases; they have referred the determination of them to the next parliament, as appears by 2 E. 3, 6, 7. 1 E. 3, 8. 33 H. 6, 18. 5 E. 2. Dower 145, the case of dower of a rent-charge. And 1 Jac. the Judges refuse to deliver their opinions concerning the union of the two kingdoms. The present case is great, rare, and without precedent, therefore, not determinable but in parliament. And it is of dangerous consequence; for (1) by the same reason, all the members of the house of commons may be questioned. (2) The parties shall be disabled to make their defence, and the clerk of parliament is not bound to disclose those particulars. And by this means, the debates of a great council shall be referred to a petty jury. And the parties cannot make justification, for they cannot speak those words here, which were spoken in the parliament, without slander. And the defendants have not means to compel any to be witnesses for them; for the members of the house ought not to discover the counsel of the house: so that they are debarred of justification, evidence, and witness. Lastly, By this means, none will adventure to accuse any offender in parliament, but will rather submit himself to the common danger; for, for his pains he shall be imprisoned, and perhaps greatly fined: and if both these be unjust, yet the party so vexed can have no recompence. Therefore, &c.

The Court. The question is not now, whether these matters be offences, and whether true or false. But admitting them to be offences, the sole question is, Whether this court may punish them; so that a great part of your argument is nothing to the present question.

At another day, being the next,

Mr. *Calthorpe* (who succeeded Mr. Mason, as Recorder of London) argued for Mr. Valentine, another of the defendants:

1. In general, he said, for the nature of the crimes, that they are of four sorts: 1. In Matter. 2. In Words. 3. By Consent. 4. By Letters.

Two of them are laid to the charge of this Defendant, to wit, the crime of the Matter, and of Consent. And of offences, Bracton makes some public, some private. The offences here are public. And of them, some are capital, some not capital; as assault, conspiracy, and such like, which have not the punishment of life and death. Public crimes capital are such as are against the law of nature, as treason, murder; I will agree, that if they be committed in parliament, they may be questioned elsewhere out of parliament. But in our case, the crimes are not capital, for they are assault and conspiracy, which in many cases may be justified, as appears by 22 H. 6, Keilw. 92. 2. Ass. 3 H. 4, 10. 22 E. 4, 6. Therefore this court shall not have jurisdiction of them, for they are not against the law of nations, of God, or nature; and if these matters shall be examinable here, by consequence all actions of parliament-men may be drawn in question in this court. But it seems by these reasons, that this court shall not have jurisdiction, as this case is:

1. Because these Offences are justifiable, being but the bringing the Speaker to the Chair, which also perhaps was done by the Votes of the Commons; but if these matters shall be justified in this court, no trial can be, for upon issue of his own wrong, he cannot be tried, because acts done in the house of commons are of record, as it was resolved in the parliament, 1 Jac. and 16 H. 7, 3. C. 9. 3. are that such matters cannot be tried by the country. And now they cannot be tried by record, because, as 22 H. 8, Dy. 32. is, an inferior court cannot write to a superior. And no Certiorari lies out of the Chancery, to send this here by Mittimus, for there was never any precedent thereof; and the book of the house of commons, which is with their clerk, ought not to be divulged. And *C. Little.* is, that if a man be indicted in this court for piracy committed upon the sea, he may well plead to the jurisdiction of this court, because this court cannot try it.

2. It appears by the old Treatise, 'De modo 'tenendi Parliamentum,' that the Judges are but assistants in the parliament; and if any words or acts are made there, they have no power to contradict or controul them. That it is incongruous that they, after the parliament dissolved, shall have power to punish such words or acts, which at the time of the speaking or doing, they had not power to contradict. There are superior, middle, and more inferior magistrates; and the superior shall not be subject to the controul of the inferior. It is a position, that 'in pares est nullum imperium, 'multo minus in eos, qui magis imperium habent.' *C. Littl.* says, That the parliament is the supreme tribunal of the kingdom, and they are Judges of the supreme tribunal; therefore they ought not to be questioned by their inferiors. (3). The Offences objected do concern the privileges of parliament, which privileges are determinable in parliament, and not elsewhere, as appears by the precedents which have been cited before. (4.) The Common Law hath assigned proper courts for matters, in respect of the place and persons: 1. For the place, it appears by 11 Ed. 4, 3, and old Entries, 101, that in an *ejectione firmæ*, it is a good plea, that the land is ancient demesne, and this excludes all other courts. So it is for land in Durham, old Entries, 419, for it is questionable there, and not out of the County. 2. For persons, H. 15 H. 7, rol. 93, old Entries, C. If a clerk of the Chancery be impleaded in

the court, he may plead his privilege, and shall not answer. So it is of a Clerk of the Exchequer, old Entries, 473, then much more when offences are done in parliament, which is exempt in ordinary jurisdiction, they shall not be drawn into question in this court. And if a man be indicted in this court, he may plead sanctuary, 22 H. 7, Keilw. 91. & 22, and shall be restored, 21 E. 3, 60. The Abbot of Bury's Case is to the same purpose. (5.) For any thing that appears, the house of commons had approved of these matters, therefore they ought not to be questioned in this court. And if they be offences, and the said house hath not punished them, this will be a casting of imputation upon them. (6.) It appears by the old Entries, 446, 447. that such an one ought to represent the borough of St. Germains, from whence he was sent; therefore he is in nature of an ambassador, he shall not be questioned for any thing in the execution of his office, if he do nothing against the Law of Nature or Nations, as it is the case of an ambassador. In the time of queen Elizabeth, (Camden's Brit. 449.) the bishop of Ross, in Scotland, being ambassador here, attempted divers matters against the State; and by the opinion of all the civilians of the said time, he may be questioned for those offences, because they are against the law of nations and nature; and in such matters, he shall not enjoy the privileges of an ambassador. But if he commit a civil offence, which is against the municipal law only, he cannot be questioned for it, as Bodin. de Republica, agrees the case. Upon the Statute of 28 H. 8, c. 15, for Trial of Pirates, 13 Jac. the case fell out to be thus: A Jew came ambassador to the United Provinces, and in his journey he took some Spanish ships, and after was driven upon this coast; and agreed upon the said statute, that he cannot be tried as a pirate here by commission, but he may be questioned *civiliter* in the admiralty; for, 'legati suo regi soli judicium faciunt.' So ambassadors of parliament, *soli parliamento*, to wit, in such things, which of themselves are punishable. (7.) There was never any precedent, that this court had punished offences of this nature, committed in parliament, where any plea was put in, as here it is to the jurisdiction of the court; and where there is no precedent, non-usage is a good expositor of the law. Lord *Littl. Section* 180. *Co. Littl.* 181, says, as usage is a good interpreter of the laws, so non-usage, where there is no example, is a great intendment that the law will not bear it. 6 Eliz. Dy. 229, upon the Statute of 27 H. 8, of inrollments, that bargain and sale of a house in London ought not to be enrolled; the reason there given is, because it is not used. 13 Eliz. Dy. 376, no error lies here of a Judgment given in the five ports, because such writ was never seen; yet in the diversity of Courts it is said, that error lies of a Judgment given in the five ports. 39 H. 6, 39, by Ashton, that a protection to go to Rome was never seen, therefore he disallowed it. (8.) If this Court shall have jurisdiction, the court may give judgment according to law, and yet contrary to parliament law, for the parliament in divers cases hath a peculiar law. Notwithstanding the Statute of 1 H. 5, c. 1. That every burgess ought to be resident within the borough of which he is burgess, yet the constant usage of parliament is contrary thereunto; and if such matter shall be in question before ye, ye ought to adjudge according to the statute, and not according to their usage. So the house of Lords hath a special law also, as appear by 11 R. 2, the Roll of the process and judgment (which hath been cited before to another purpose) where an appeal was not according to the one law or the other, yet it was good according to the course of parliament. (9.) Because this matter is brought in this court by way of Information, where it ought to be by way of Indictment. And it appears by 41 Ass. p. 12, that if a bill of Deceit be brought in this court, where it ought to be by writ, this matter may be pleaded to the jurisdiction of the court, because it is *vi et armis*, and *contra pacem*. It appears by all our Books, that informations ought not to be grounded upon surmises, but upon matter of record, 4 H. 7, 5. 6 E. 6, Dy. 74. Information in the Exchequer, and 11 H. 8, Keilw. 101, are to this purpose. And if the matter be *vi et armis*, then it ought to be found by inquest. 2 E. 3, 1, 2. Appeal shall not be granted upon the return of the sheriff, but the king ought to be certified of it by indictment. 1 H. 7, 6, and Stamf. f. 95, a. upon the statute of 25 E. 3, c. 4, that none shall be imprisoned but upon indictment or presentment; and 28 E. 3, c. 3, 42 E. 3, c. 3, are to the same purpose. So here, this information ought to have been grounded upon indictment, or other matter of record, and not upon bare intelligence given to the king. (10.) The present case is great and difficult, and in such cases, the Judges have always outed themselves of jurisdiction, as appears by Bracton, Book 2, f. 1, 'Si aliquid novi non usitatum in regno accidit,' 2 E. 3, 6, 7, and Dower 242.

Now I will remove some Objections which may be made.

Where the king is Plaintiff, it is in his election to bring his action in what Court he pleases. This is true in some sense, to wit, That the King is not restrained by the Statute of Magna Charta, 'Quod communia placita non sequan-'tur curiam nostram;' for he may bring his *quare impedit* in B. R. And if it concerns Durham, or other County Palatine, yet the king may have his action here: for the said Courts are created by patent, and the king may not be restrained by parliament, or by his own patent, to bring his action where he pleaseth. But the king shall not have his action where he pleaseth against a prohibition of the common law, as 12 H. 7, Keilw. 6, the king shall not have a *formedon* in Chancery. And C. 6. 20 Gregory's Case, if the king will bring an information in an inferior court, the party may plead to the jurisdiction. So where

the Common Law makes a prohibition, the king hath not election of his court.

The information is *contra formam statuti*, which Statute, as I conceive, is intended the statute of 5 H. 4, c. 6, and 11 H. 6, c. 11, which gives power to this court to punish an assault made upon the servant of a knight of Parliament. But our case is not within those statutes, nor the intent of them; for it is not intendible, that the parliament should disadvantage themselves in point of their privilege. And this was a Trespass done within the house, by parliament-men amongst themselves. And Crompton's Jurisdiction of Courts, f. 8, saith, That the parliament may punish trespasses done there.

Precedents have been cited of Parliament-men imprisoned and punished for matters done in parliament. To this I say, That there is *via juris*, and *via facti*; and *via facti* is not always *via juris*. C. 4, 93, Precedents are no good directions, unless they be judicial.

Otherwise there will be a failure of justice, wrongs shall be unpunished. To this I answer, That a mischief is oft-times rather sufferable than an inconvenience, to draw in question the privileges of parliament. By the antient Common Law, as it appears by 21 E. 3, 23, and 21 Ass. if an infant bring an Appeal, the suit shall be staid during his infancy; because the party cannot have his trial by battle against the infant; but the law is now held otherwise in the said case. And in some cases, criminal offences shall be dispunished, 29 H. 8, Dy. 40. Appeal of Murder lies not for Murder done in several Counties.

This court of B. R. is *coram ipso rege*; the king himself, by intendment, is here in person. And, as it is said, C. 9, 118, it is, 'Supremum 'Regni Tribunal,' of ordinary jurisdiction. But to this I say, That the Parliament is a transcendent court, and of transcendent jurisdiction: it appears by 28 Ass. p. 52, that the stile of other courts is *coram rege*, as well as this is; as 'coram rege in cancellaria, coram rege in 'camera;' and though it be *coram rege*, yet the Judges give the judgment. And in the time of H. 3, in this court, some entries were 'coram rege,' others, 'coram Hugone de Bigod.'

The Privileges of Parliament are not questioned, but the conspiracies and misdemeanors of some of them. But to this I say, that the distinction is difficult and narrow in this case, where the offences objected are justifiable, and if they be offences, this reflects upon the house, which hath not punished them.

The Cases of 3 E. 3, 19, and 1 and 2 Phil. et Mar. have been objected. But for the last it is observable, That no plea was pleaded to the jurisdiction, as it is in our case. And if a parliament-man, or other which hath privilege, be impleaded in foreign court, and neglect his plea to the jurisdiction, the court may well proceed, 9 H. 7, 14, 36 H. 6, 34 H. 13 Jac. In this Court the lord Norreys, that was a peer of parliament, was indicted for the murder of one Bigod, and pleaded his pardon. And there it was doubted, how the Court should proceed against him (for he, by law, ought to have his trial by his peers). And it was resolved, that when he pleads his pardon, or confesseth the fault, thereby he gives jurisdiction to the court, and the court may give judgment against him. So that these cases, where it was not pleaded to the jurisdiction, can be no precedent in our case.

The privilege here is not claimed by Prescription or Charter, therefore it is not good. But I say, that notwithstanding this, it is good; for where the Common Law outs a court of jurisdiction, there needs no Charter or Prescription; 10 H. 6, 13, 8 H. 8, Keilw. 111. Br. n. c. 515. Where sanctuary of a Clerk is pleaded, there is no need to make prescription, because every Church is a sanctuary by the common law. Therefore, &c.

Sir *Robert Heath*, the King's Attorney, the same day argued on the other side, but briefly. First, he answered the Objections which had been made.

1. He said, That informations might well be for matters of this nature, which are not capital; and that there are many precedents of such informations. (But Note, that he produced none of them.)

2. It hath been objected, That they were council, therefore they ought to speak freely. But such speeches which are here pronounced prove them not counsellors of state, but traitors; the addition of one word would have made it treason, to wit, *proditorie*. But it is the pleasure of the king to proceed in this manner, as now it is. And there is great difference between Bills and Libels, and between the proceedings, as council and as mutinous.

3. That it would be of dangerous consequence; for by this means none would adventure to complain of grievances. I answer, they may make their complaints in a parliamentary manner; but they may not move things, which tend to distraction of the king and his government.

4. These matters may be punished in following parliaments. But this is impossible, for following parliaments cannot know with what mind these matters were done. Also the House of Commons is not a court of justice of itself. The two houses are but one body, and they cannot proceed criminally to punish crimes, but only their members by way of imprisonment; and also they are not a Court of Record. And they have forbid their clerks to make entry of their speeches, but only of matters of course; for many times they speak upon the sudden, as occasion is offered. And there is no necessity that the king should expect a new parliament. The Lords may grant Commissions to determine matters after the parliament ended; but the House of Commons may not do so. And also a new House of Commons consists of new men, which have no cognizance of these offences: 1 H. 4. The bishop of Carlile for words spoken in the parliament, that the king had not right to the crown, was arraign

in this court of High-treason; and then he did not plead his privilege of parliament, but said, That he was *Episcopus unctus*, &c.

4. 4 H. 8. Strode's Case hath been objected. But this is but a particular act, although it be in print; for Rastal entitles it by the name of Strode: so the title, body, and preamble of the act are particular.

6. That this is an inferior court to the parliament, therefore, &c. To this I say, That, even sitting the parliament, this court of B. R. and other courts, may judge of their privileges, as of a parliament-man put in execution, &c. and other cases. It is true that the judges have oft-times declined to give their judgment upon the privileges of parliament, sitting the court. But from this it follows not, that when the offence is committed there, and not punished, and the said court dissolved, that therefore the said matter shall not be questioned in this court.

7. By this means the Privileges of parliament shall be in great danger, if this court may judge of them. But I answer, That there is no danger at all; for this court may judge of acts of parliament.

8. Perhaps these matters were done by the Votes of the house; or, if they be offences, it is an imputation to the house to say, That they had neglected to punish them; but this matter doth not appear. And if the truth were so, these matters might be given in evidence.

9. There is no precedent in the case, which is a great presumption of law. But to this I answer, That there was never any precedent of such a fact, therefore there cannot be a precedent of such a judgment. And yet in the time of queen Elizabeth, it was resolved by Brown, and many other justices, that offences done in parliament may be punished out of parliament, by imprisonment or otherwise. And the case of 3 E. 3, 19, is taken for good law by Staml. and Fitzh. And 22 E. 3, and 1 Mar. accord directly with it. But it hath been objected, that there was no plea made to the jurisdiction. But it is to be observed, that Plowden, that was a learned man, was one of the defendants, and he pleaded not to the jurisdiction, but pleaded licence to depart. And the said information depended during all the reign of queen Mary, during which time there were four parliaments, and they never questioned this matter.—But it hath been further objected, That the said case differs from our case, because that there the offence was done out of the house, and this was done within the house. But in the said case, if licence to depart be pleaded, it ought to be tried in parliament, as well as these offences here. Therefore, &c.

The Judges also the same day spake briefly to the case, and agreed with one voice, 'That 'the court, as this case is, shall have jurisdic-'tion, although that these offences were com-'mitted in parliament, and that the imprisoned 'members ought to answer.'

Jones began and said, That though this question be now newly moved, yet it is an ancient question with him; for it had been in his thoughts these 18 years. For this information, there are three questions in it: 1. Whether the matters informed be true or false? And this ought to be determined by Jury or Demurrer. 2. When the matters of the information are found or confessed to be true, if the information be good in substance? 3. Admit that the offences are truly charged, if this Court hath power to punish them? And that is the sole question of this day.—And it seems to me, that of these offences, although committed in parliament, this court shall have jurisdiction to punish them. The plea of the Defendants here to the jurisdiction being concluded with a demurrer, is not peremptory unto them, although it be adjudged against them; but if the plea be pleaded to the jurisdiction, which is found against the Defendant by verdict, this is peremptory.

In the discussion of this point, I declined these questions: 1. If the matter be voted in parliament, when it is finished, it can be punished and examined in another court? 2. If the matter be commenced in parliament, and that ended, if afterward it may be questioned in another court?

I question not these matters; but I hold, that an offence committed criminally in parliament, may be questioned elsewhere, as in this court; and that for these Reasons:

1. 'Quia interest reipublicæ ut maleficia 'non maneant impunita:' and there ought to be a fresh punishment of them. Parliaments are called at the king's pleasure, and the king is not compellable to call his parliament; and if before the next parliament, the party offending, or the witnesses die, then there will be a failure of justice.

2. The parliament is no constant court; every parliament mostly consists of several men, and, by consequence, they cannot take notice of matters done in the foregoing parliament; and there they do not examine by oath, unless it be in Chancery, as it is used of late time.

3. The parliament cannot send process to make the offenders to appear at the next parliament; and being at large, if they hear a noise of a parliament, they will *fugam facere*, and so prevent their punishment.

4. Put the case, that one of the Defendants be made a baron of parliament, now he cannot be punished in the house of commons, and so he shall be unpunished.

It hath been objected, 'That the parliament 'is the superior court to this, therefore this 'court cannot examine their proceedings.'

To this I say, That this Court of the King's-Bench is a higher court than the Justices of Oyer and Terminer, or the Justices of Assize: but if an offence be done where the King's-Bench is, after it is removed, this offence may be examined by the Justices of Oyer and Terminer, or by the Justices of Assize. We can-

not question the judgments of parliaments, but their particular offences.

2 Object. It is a privilege of parliament, whereof we are not competent judges.

To this I say, That 'privilegium est privata 'lex et privat. legem.' And this ought to be by grant or prescription in parliament: and then it ought to be pleaded for the manner, as is in 33 H. 1, Dy. as it is not here pleaded. Also we are Judges of all acts of parliament: as 4 H. 7, ordinance made by the king and commons is not good, and we are judges what shall be a session of parliament, as it is in Plowden, in Partridge's Case. We are Judges of their lives and lands, therefore of their liberties. And 3 Eliz. which was cited by Mr. Attorney, it was the opinion of Dyer, Catlyn, Welsh, Brown, and Southcot, justices, That offences committed in parliament may be punished out of parliament. And 3 Ed. 5, 19, it is good law. And it is usual near the end of parliaments, to set down some petty punishment upon offenders in parliament, to prevent other courts. And I have seen a Roll in this Court, in 6 H. 6, where Judgment was given in a Writ of Annuity in Ireland, and afterward the said judgment was reversed in parliament in Ireland; upon which judgment, Writ of Error was brought in this Court, and reversed.

Hyde, Chief-Justice, to the same intent: No new matter hath been offered to us now by them that argue for the Defendants, but the same reasons and authorities in substance, which were objected before all the justices of England, and barons of the Exchequer, at Serjeants-inn in Fleet-street, upon an Information in the Star Chamber for the same matter. At which time, after great deliberation, it was resolved by all of them, 'That no offence com-'mitted in parliament, that being ended, may 'be punished out of parliament.' And no court more apt for that purpose than this court in which we are: and it cannot be punished in a future parliament, because it cannot take notice of matters done in a foregoing parliament.

As to what was said, That an inferior court cannot meddle with matters done in a superior; true it is, that an inferior court cannot meddle with judgments of a superior court; but if particular members of a superior court offend, they are oft-times punishable in an inferior court, as, if a judge shall commit a capital offence in this court he may be arraigned thereof at Newgate, 3 E. 3, 19. and 1 Mar. which have been cited, over-rule this case. Therefore, &c.

Justice *Whitlocke*. 1. I say in this case, 'Nihil dictum quod non dictum prius.' 2 That all the Judges of England have resolved this very point. 3. That now we are but upon the brink and skirts of the cause: for it is not now in question, if these be offences or no; or, if true or false; but only if this court have jurisdiction.

But it hath been objected, That the offence is not capital, therefore it is not examinable in this court.

But though it be not capital, yet it is criminal, for it is sowing of sedition to the destruction of the commonwealth. The question now is not between us that are Judges of this Court and the parliament, or between the king and the parliament, but between some private members of the house of commons and the king himself: for here the king himself questions them for those offences, as well he may. In every commonwealth there is one supereminent power, which is not subject to be questioned by any other, and that is the king in the commonwealth, who, as Bracton saith, 'Solus 'Deum habet ultorem.' But no other within the realm hath this privilege. It is true, that that which is done in parliament by consent of all the house, shall not be questioned elsewhere: but if any private members 'exerce 'personas judicem, et induunt malefacientium 'personas, et sunt seditiosi;' is there such sanctimony in the place, that they may not be questioned for it elsewhere? The bishop of Ross, as the case hath been put, being ambassador here, practised matters against the state, and it was resolved, That although 'legatus 'sit rex in alieno solo,' yet when he goes out of the bounds of his office, and complots with traitors in this kingdom, that he shall be punished as an offender here. A minister hath a great privilege when he is in the pulpit; but yet, if in the pulpit he utter speeches, which are scandalous to the state, he is punishable. So in this case, when a burgess of parliament becomes mutinous, he shall not have the privilege of parliament. In my opinion, the realm cannot consist without parliaments, but the behaviour of parliament-men ought to be parliamentary. No outrageous speeches were ever used against a great minister of state in parliament which have not been punished. If a judge of this court utter scandalous speeches to the state, he may be questioned for them before commissioners of Oyer and Terminer, because this is no judicial act of the court.

But it hath been objected, That we cannot examine acts done by a higher power.

To this I put this case: when a peer of the realm is arraigned of Treason, we are not the judges, but the High-Steward, and he shall be tried by his peers: but if error be committed in this proceeding, that shall be reversed by error in this court: for that which we do is *coram ipso rege*.

It hath been objected, 'That the Parlia-'ment-law differs from the law by which we 'judge in this court in sundry cases.' And for the instance which hath been made, 'That by 'the statute, none ought to be chosen burgess 'of a town in which he doth not inhabit, but 'that the usage of parliament is contrary;' but if information be brought upon the said statute against such a burgess, I think that the usage is a good warrant for us to give judgment against him.

And it hath been objected, 'That there is 'no Precedent in this matter.'

But there are sundry Precedents, by which it appears, that the parliament hath transmitted matters to this court; as 2 R. 2, there being a question between a great peer and a bishop, it was transmitted to this court, being for matter of behaviour: and although the Judges of this court are but inferior men, yet the court is higher. For it appears by 11 Eliz. Dy. That the Earl Marshal of England is an officer of this court; and it is always admitted in parliament, That the Privileges of Parliament hold not in three cases, to wit, 1. In case of Treason. 2. In case of Felony. And 3. in suit for the Peace. And the last is our very case. Therefore, &c.

Croke argued to the same intent: he said, That these offences ought to be punished in the court, or no where; and all manner of offences which are against the crown are examinable in this court. It hath been objected, 'That by 'this means, none will adventure to make com-'plaints in parliament.' That is not so; for he may complain in a parliamentary course, but not falsely and unlawfully, as here is pretended: for that which is unlawfully, cannot be in a parliamentary course.

It hath been objected, 'That the parliament 'is a higher court than this.' And it is true: but every member is not a Court; and if he commit offence he is punishable here. Our court is a court of high jurisdiction, it cannot take cognizance of real pleas; but if a real plea comes by error in this court, it shall never be transmitted. But this court may award a Grand Cape, and other process usual in real actions: but of all capital and criminal causes, we are originally competent judges, and by consequence of this matter. But I am not of the opinion of Mr. Attorney-General, that the word *proditorie* would have made this treason. And for the other matters, he agreed with the judges. Therefore by the court, the defendants were ruled to plead further: and Mr. Lenthal of Lincoln's-Inn was assigned of counsel for them.

But inasmuch as the Defendants would not put in any other Plea, the last day of the Term judgment was given against them upon a *nihil dicit*; which Judgment was pronounced by Jones to this effect:

"The matter of the Information now, by the confession of the Defendants, is admitted to be true, and we think their plea to the jurisdiction insufficient for the matter and manner of it. And we hereby will not draw the true Liberties of Parliament-men into question; to wit, for such matters which they do or speak in a parliamentary manner. But in this case there was a conspiracy between the Defendants to disorder the state, and to raise sedition and discord between the king, his peers, and people; and this was not a parliamentary course. All the Judges of England, except one, have resolved the statute of 4 H. 8, to be a private act, and to extend to Strode only. But every member of the parliament shall have such privileges as are there mentioned; but they have no privilege to speak at their pleasure. The parliament is an high court, therefore it ought not to be disorderly, but ought to give good example to other courts. If a Judge of our court should rail upon the state, or clergy, he is punishable for it. A member of the parliament may charge any great officer of the state with any particular offence; but this was a malevolous accusation in the generality of all the officers of state, therefore the matter contained within the information is a great offence, and punishable in this court.

2. "For the Punishment, although the Offence be great, yet that shall be with a light hand, and shall be in this manner.

1. "That every of the Defendants shall be imprisoned during the king's pleasure: Sir John Elliot to be imprisoned in the Tower of London, and the other Defendants in other prisons.

2. "That none of them shall be delivered out of prison until he give security in this court for his good behaviour, and have made submission and acknowledgment of his offence.

3. "Sir John Elliot, inasmuch as we think him the greatest offender, and the ringleader, shall pay to the king a Fine of 2,000*l.* and Mr. Hollis, a Fine of 1,000 marks: and Mr. Valentine, because he is of less ability than the rest, shall pay a Fine of 500*l.*" And to all this, all the other Justices with one voice accorded.

Afterwards the Parliament which met the 3d of November, 1640, upon report made by Mr. Recorder Glyn, of the state of the several and respective Cases of Mr. Hollis, Mr. Selden, and the rest of the imprisoned Members of the parliament, in Tertio Caroli, touching their extraordinary sufferings, for their constant affections to the Liberties of the kingdom, expressed in that parliament; and upon Arguments made in the house thereupon, did, upon the 6th of July, 1641, pass these ensuing Votes: which, in respect of the reference they have to these last mentioned proceedings, we have thought fit to insert: viz.

July 6, 1641.

1. "Resolved upon the question, That the issuing out of the Warrants from the lords and others of the privy-council, compelling Mr. Hollis, and the rest of the members of that parliament, 3 Car. during the parliament, to appear before them, is a breach of the privilege of parliament by those privy counsellors.

2. "That the committing of Mr. Hollis and the rest, by the lords and others of the privy-council, during the parliament, is a breach of the Privilege of parliament by those lords, and others.

3. "That the searching and sealing of the chamber, study, and papers of Mr. Hollis, Mr. Selden, and sir John Elbot, being members of this house, and during the parliament, and issuing of Warrants to that purpose, was a breach of the privilege of parliament, by those that executed the same.

4. "That the exhibiting of an Information in

the Court of Star-Chamber, against Mr. Hollis and the rest, for matters done by them in parliament, being members of parliament, and the same so appearing in the Information, is a breach of the privilege of parliament.

5. "That sir Robert Heath, and sir Humphrey Davenport, sir Heneage Finch, Mr. Hudson, and sir Robert Berkley, that subscribed their names to the Information, are guilty thereby of the breach of privilege of parliament.

6. "That there was a delay of justice towards Mr. Hollis, and the rest that appeared upon the Habeas Corpus, in that they were not bailed in Easter and Trinity-term, 5 Car.

7. "That sir Nich. Hyde, then Chief Justice of the King's-bench, is guilty of this delay.

8. "That sir William Jones, being then one of the Justices of the court of King's-bench, is guilty of this delay.

9. "That sir James Whitlocke, knt. then one of the justices of the court of King's-bench, is not guilty of this delay*."

* Mr. Whitlocke in his Memorials of the English Affairs, p. 38, 39, says, "In the house there fell out a Debate touching the Writs of Habeas Corpus, upon which Selden and the rest of his fellow-prisoners demanded to be bailed; and the Judges of the King's-bench did not bail them, as by law they ought; but required of them sureties for their good behaviour. This was so far aggravated by some, that they moved, 'The prisoners might have reparation 'out of the estates of those Judges who then 'sat in the King's-bench when they were re-'manded to prison;' which Judges they named to be Hyde, Jones, and my father: as for judge Croke, who was one of that court, they excused him, as differing in opinion from the rest.—I being a member of the house, and son to the Judge, knew this to be mistaken, as to the fact, and spake in the behalf of my father, to this effect: 'That it was not unknown to 'divers worthy members of the house, that 'judge Whitlocke had been a faithful, able, and 'stout assertor of the Rights and Liberties of 'the free-born subjects of this kingdom; for 'which he had been many ways a sufferer. And 'particularly by a strait and close imprisonment, 'for what he said and did, as a member of this 'honourable house in a former parliament: and 'he appeals to those noble gentlemen, who can-'not but remember those passages; and some 'who were then sufferers with him. And for 'his Opinion, and carriage in the Case of the 'Habeas Corpus, it is affirmed to have been 'the same with that of Judge Croke; and 'he appeals for this, to the honourable gentle-'men who were concerned in it; and others, 'who were present then in court.' Hampden, and divers others, seconded this motion; who affirmed very much of the matter of fact, and expressed themselves with great respect and honour to the memory of the deceased Judge, who was thereupon reckoned by the house in the same degree with Judge Croke, as to their censure and proceedings."

Ordered, That the further debate of this shall be taken into consideration on to-morrow morning.

July 8, 1641.

10. "Resolved upon the question, That sir George Croke, knight, then one of the Judges of the King's-bench, is not guilty of this delay.

11. "That the continuance of Mr. Hollis, and the rest of the Members of Parliament, 3 Car. in prison, by the then Judges of the King's-bench, for not putting in sureties for their good behaviour, was without just or legal cause.

12. "That the exhibiting of the informations against Mr. Hollis, sir John Elliot, and Mr. Valentine, in the King's-bench, being Members of Parliament, for matters done in parliament, was a breach of the privilege of parliament.

13. "That the over-ruling of the Plea, pleaded by Mr. Hollis, sir John Elliot, and Mr. Valentine, upon the information, to the jurisdiction of the court, was against the law and privilege of parliament.

14. "That the judgment given upon a *nihil dicit*, against Mr. Hollis, sir John Elliot, and Mr. Valentine, and fine thereupon imposed, and their several Imprisonments thereupon, was against the law and privilege of parliament.

15. "That the several proceedings against Mr. Hollis, and the rest, by committing them, and prosecuting them in the Star-Chamber, and in the King's-Bench, is a Grievance.

16. "That Mr. Hollis, Mr. Stroud, Mr. Valentine, and Mr. Long, and the heirs and executors of sir John Elliot, sir Miles Hobart, and sir Peter Heyman, respectively, ought to have reparation for their respective damages and sufferings, against the lords and others of the council, by whose warrants they were apprehended and committed, and against the council that put their hands to the information in the Star-Chamber, and against the Judges of the King's-Bench.

17. "That Mr. Lawrence Whitaker, being a member of the parliament 3 Car. entering into the chamber of sir John Elliot, being likewise a member of the parliament, searching of his trunks and papers, and sealing of them, is guilty of the breach of the privilege of parliament, this being done before the dissolution of parliament.

18. "That Mr. Lawrence Whitaker being guilty of the breach of the privileges as aforesaid, shall be sent forthwith to the Tower, there to remain a prisoner during the pleasure of the house."

Mr. Whitaker was called down, and kneeling at the bar, Mr. Speaker pronounced the Sentence against him accordingly.

Mr. Whitaker being at the bar, did not deny, but that he did search and seal up the chamber, and trunk, and study of sir John Elliot, between the 2d and 10th of March, during which time the parliament was adjourned, but endeavoured to extenuate it, by the confusion of the times, at that time; the length of the time since that crime was committed, being

seven years; the command that lay upon him, being commanded by the king and 23 privy-counsellors.

Afterwards Mr. Recorder Glyn made a further Report to the House of Commons, viz.

The Warrant, which issued and was subscribed by twelve privy-counsellors, to summon one of the members of the house of commons, to the Parliament of *tertio Caroli*, to appear before them during the parliament, viz. Mr. Wm. Stroud, Mr. Benj. Valentine, Mr. Hollis, sir John Elliot, Mr. Selden, sir Miles Hobart, sir Peter Heyman, Mr. Walter Long, and Mr. Wm. Coriton, bearing date *tertio Martii, quarto Caroli*; and the names of the twelve privy-counsellors that signed this warrant, were read: the parliament being adjourned the 2d of March, to the 10th of March, and then dissolved.

The Warrants under the hands of sixteen privy-counsellors, for committing of Mr. Denzil Hollis, sir John Elliot, Mr. John Selden, Mr. Benj. Valentine, and Mr. Wm. Coriton, close prisoners to the Tower, bearing date, *quarto Martii, quarto Caroli*, during the parliament; were read; and the names of the privy-counsellors that subscribed them, were read. The Warrants under the hands of 22 privy-counsellors, directed to Wm. Boswel, esq. to repair to the lodgings of Denzil Hollis, esq. and to Simon Digby, esq. to repair to the lodgings of Mr. John Selden, and to Lawrence Whitaker, esq. to repair to the lodgings of sir John Elliot, requiring them to seal up the trunks, studies, and cubinets, or any other thing that had any papers in them, of the said Mr. Hollis, Mr. John Selden, and sir John Elliot, were read, and likewise the names of the privy-counsellors that subscribed the said Warrants. A Warrant under the hands of 13 privy-counsellors, for the commitment of Mr. Wm. Stroud close prisoner to the King's-Bench, bearing date 2d April, 1628, was read, and the names of the privy-counsellors that subscribed it: The like Warrant was for the commitment of Mr. Walter Long, close prisoner to the Marshalsea.

Resolved, &c. 1. "That Mr. Hollis shall have the sum of 5,000*l.* for his damages, losses, imprisonments, and sufferings, sustained and undergone by him, for his service done to the commonwealth in the parliament of *tertio Caroli*.

2. "That Mr. John Selden shall have the sum of 5,000*l.* for his damages, losses, imprisonments, and sufferings, sustained and undergone by him, for his service done to the commonwealth in the parliament of *tertio Caroli*.

3. "That the sum of 5,000*l.* be assigned for the damages, losses, imprisonments, and sufferings, sustained and undergone by sir John Elliot, for his service done to the commonwealth in the parliament of *tertio Caroli*, to be disposed of in such manner as this house shall appoint.

4. "That the sum of 2,000*l.* part of 4,000*l.* paid into the late court of Wards and Liveries, by the [illegible], being commanded by the king and 23 privy-counsellors, shall be repaid to Mr. Elliot, out of the arrears of monies payable into the late court of Wards and Liveries, before the taking away of the said late court.

Ordered, "That it be referred to the committee who brought in this report, to examine the decree made in the late court of Wards and Liveries, concerning the marriage of sir John Elliot's heir with sir Daniel Norton's daughter; and what monies were paid by reason of the said Decree, and by whom; and to report their opinion thereupon to the house. Also, That it be referred to the committee, to examine after what manner sir John Elliot came to his death, his usage in the Tower, and to view the rooms and places where he was imprisoned, and where he died, and to report the same to the house.

Resolved, &c. 5. "That the sum of 5,000*l.* shall be paid unto the ..... of sir Peter Heyman, for the damages, losses, sufferings, and imprisonments, sustained and undergone by sir Peter, for his service done to the commonwealth in the parliament of *tertio Caroli*.

6. "That Mr. Walter Long shall have the sum of 5,000*l.* paid unto him, for the damages, losses, sufferings, and imprisonment, sustained and undergone by him, for his service done to the commonwealth in the parliament *tertio Caroli*.

7. "That the sum of 5,000*l.* shall be assigned for the damages, losses, sufferings, and imprisonment, sustained and undergone by Mr. Stroud (late a member of this house) deceased, for service done by him to the Commonwealth in the parliament of *tertio Caroli*.

8. "That Mr. Benj. Valentine shall have the sum of 5,000*l.* paid unto him, for the damages, losses, sufferings, and imprisonments, sustained and undergone by him, for his service to the Commonwealth in the parliament of *tertio Caroli*.

9. "That the sum of 500*l.* shall be bestowed and disposed of, for the erecting a Monument to sir Miles Hobart, a member of the parliament of *tertio Caroli*, in memory of his sufferings for his service to the Commonwealth in the parliament of *tertio Caroli*."

Ordered, That it be recommitted to the Committee, who brought in this report, to consider how the several sums of money this day ordered to be paid for damages to the several members before named, for their sufferings in the service of the Commonwealth, may be raised.

In the reign of king Charles 2, this Affair was taken into consideration, and the house of commons came to several Resolutions; viz.

Die Martis, 12 Nov. 1667.

Upon a Report made by Mr. Vaughan from the committee concerning Freedom of Speech in parliament.

Resolved, &c. That the house do agree with the committee, That the act of parliament in 4 Hen. 8, commonly intitled, An Act concern-

ing Richard Strode, is a general law, extending to indemnity all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters, in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament.

Die Sabbati, 23 Nov. 1667.

Resolved, &c. That the Judgment given 5 Car. against sir John Elliot, Denzil Hollis, and Benj. Valentine, in the King's-Bench, is an illegal judgment, and against the freedom and privilege of parliament.

Die Sabbati, 7 Dec. 1667.

Resolved, &c. That the concurrence of the lords be desired to the Votes of this house concerning Freedom of Speech in parliament: and that a Conference be on Monday next desired to be had with the lords, at which time the Votes may be delivered, and reasons for them given.

Die Jovis, 12 Dec. 1667.

A message from the lords by sir William Child and sir Thomas Estcourt. 'Mr. Speaker; The lords have commanded us to acquaint you, that they agree with this house in the Votes delivered them at the last Conference concerning Freedom of Speech in parliament.

Die Mercurii, 11 Dec. 1667.

Next the Lord Chamberlain and the lord Ashley reported the effect of the Conference with the house of commons yesterday, which was managed by Mr. Vaughan, who said he was commanded by the house of commons to acquaint their lordships with some resolves of their house concerning the Freedom of Speech in Parliament, and to desire their lordships concurrence therein.

In order to which, he was to acquaint their lordships with the Reasons that induced the house of commons to pass those resolves. He said the house of commons was accidentally informed of certain Books published under the name of sir George Croke's Reports, in one of which there was a Case published, which did very much concern this great Privilege of Parliament: and which passing from hand to hand amongst the men of the long robe, might come in time to be a received opinion as good law.

The House of Commons considering the consequence, did take care that this Case might be enquired into, and caused the Book to be produced and read in their house, and he thought it the next and clearest way to inform their lordships, is to read the Case itself, which is Quinto Caroli primi Michaelmas term, which Case was read as followeth:

"The King *v.* sir John Elliot, Denzil Hollis, and Benjamin Valentine.

"An Information was exhibited against them by the Attorney-General, reciting, that a parliament was summoned to be held at Westminster, 17 Martii 3 Caroli regis ibidem inchoat. And that sir John Elliot was duly elected and returned knight for the county of Cornwall, and the other two burgesses of parliament for other places: and sir John Finch chosen Speaker. That sir John Elliot, 'machinans et intendens omnibus viis et modis 'seminare et excitare' discord, evil will, murmurings, and seditions, as well 'versus regem, 'magnates, prælatos, proceres et justiciarios, et 'reliquos subjectos regis, et totaliter deprivare 'et subvertere regimen et gubernationem regni 'Angliæ, tam in domino rege quam in concilia'riis et ministris suis cujuscunque generis, et 'introducere tumultum et confusionem' in all estates and parts, 'et ad intentionem,' that all the king's subjects should withdraw their affections from the king, the 23d of Feb. anno 4 Car. in the parliament, and hearing of the commons, 'falso, malitiose, et seditiose,' used these words, 'The king's privy council, his 'judges, and his counsel learned, have con'spired together to trample under their feet the 'Liberties of the Subjects of this realm, and 'the liberties of this house.'

"And afterwards, upon the 2nd of March, anno 4, aforesaid, the king appointed the parliament to be adjourned until the 10th of March next following, and so signified his pleasure to the house of commons; and that the three Defendants the said 2d day of March, 4 Car. *malitiose* agreed, and amongst themselves conspired to disturb and distract the commons, that they should not adjourn themselves according to the king's pleasure before signified; and that the said sir John Elliot, according to the agreement and conspiracy aforesaid, had maliciously 'in propositum et intentionem prædictam' in the house of commons aforesaid, spoken these false, pernicious, and seditious words precedent, &c. And that the said Denzil Hollis, according to the Agreement and Conspiracy aforesaid, between him and the other defendants, then and there 'falso, malitiose, et seditiose uttered hæc falsa, malitiosa et scandalosa 'verba præcedentia, &c.' And that the said Denzil Hollis, and Benjamin Valentine, 'secundum agreamentum et conspirationem prædict. '&c. ad intentionem et propositum prædict.' uttered the said words upon the said 2d day of March, after the signifying the king's pleasure to adjourn; and the said sir John Finch, the Speaker, endeavouring to get out of the Chair, according to the king's command, they 'vi et 'armis manu forti et illicito' assaulted, evil intreated, and forcibly detained him in the Chair; and afterwards being out of the Chair, they assaulted him in the house, and evil entreated him, 'et violenter manu forti et illicito' drew him to the Chair, and thrust him into it. Whereupon there was great tumult and commotion in the house, to the great terror of the Commons there assembled, against their allegiance, in *maximum contemptum*, and to the disherison of the king, his crown and dignity, for which, &c. To this Information the Defendants appearing, pleaded to the jurisdiction of this court, that

the court ought not to have cognizance thereof, because it is for offences done in parliament, and ought to be there examined and punished, and not elsewhere. It was thereupon demurred, and after Argument adjudged, that they ought to answer; for the charge is for conspiracy, seditious acts and practices, to stop the adjournment of the parliament, which may be examined out of parliament, being seditious and unlawful acts; and this court may take cognizance and punish them: Afterwards divers rules being given against them, viz. Sir John Elliot, that he should be committed to the Tower, and should pay 2,000*l.* fine, and upon his enlargement should find sureties for his good behaviour; and against Hollis, that he should pay 1,000 marks, and should be imprisoned, and find sureties, &c. and against Valentine, that he should pay 500*l.* fine, be imprisoned, and find sureties."

Then Mr. *Vaughan* laid much emphasis upon the words 'machinans et intendens, &c.' and then went on, That the house of commons had not only read the Case as it was in the Book, but did look into the Record, where, in the Information itself, they found some considerable differences from the print; as that the crime alledged consisting partly of Words spoken in the house, partly of criminal actions pretended to be committed; the Gentlemen accused pleaded severally, namely, specially to the words, and a several plea apart to the criminal actions: But the court dealt so craftily, that they over-ruled the whole plea, mingled together, and took it in general, so that perhaps whatsoever was criminal in the actions might serve for a justification of their rule, and might make it seem in time to become a Precedent, and a ruled case against the Liberty of Speech in Parliament, which they durst not singly and bare-faced have done.

The House of Commons did take care to enquire what ancient laws did fortify this the greatest Privilege of both houses; and they found in the 4 Hen. 8. an Act concerning one Richard Strode, who was a member of parliament, and was fined at the Stannary Courts, in the West, for condescending and agreeing with other members of the house to pass certain acts to the prejudice of the Stannaries; this act was made occasionally for him, but did reach to every member of parliament that then was, or shall be; the very words being, viz.

'And over that, it be enacted by the same au'thority, that all suits, accusements, condemn'ations, executions, fines, amercements, pu'nishments, corrections, grievances, charges 'and impositions, put or had, or hereafter to be 'put or had unto, or upon the said Richard, 'and to every other person or persons afore'specified, that now be of this present parlia'ment, or that of any parliament hereafter 'shall be, for any bill, speaking, reasoning, or 'declaring of any matter or matters concern'ing the parliament to be commenced and 'treated of, be utterly void, and of none effect. 'And over that, be it enacted by the said au'thority, that if the said Richard Strode, or any 'of the said other person or persons hereafter 'be vexed, troubled, or otherwise charged for 'any causes, as is aforesaid, that then he or 'they, and every of them so vexed or troubled 'of, or for the same, to have action upon the 'case against every such person or persons so 'vexing or troubling any, contrary to this ordi'nance and provision; in the which action the 'party grieved shall recover treble damages and 'costs, and that no protection, essoyne, nor 'wager of law in the said action in any wise be 'admitted nor received.'

He said, it is very possible the Plea of those worthy persons, Denzil Hollis, sir John Elliot, and the rest, was not sufficient to the jurisdiction of the court, if you take in their criminal actions altogether; but, as to the words spoken in parliament, the court could have no jurisdiction while this act of 4 Hen. 8. is in force, which extends to all members that then were (or ever should be,) as well as Strode; and was a public general law, though made upon a private and a particular occasion.

He recommended to their lordships the consideration of the time when these words in the Case of sir George Croke's Reports were spoken, which was the 2nd of March, 4 Caroli primi, being in that parliament which began in the precedent March, 3 Car. at which time the Judgment given in the King's-Bench about the Habeas Corpus was newly reversed, which concerned the freedom of our persons, the liberty of speech invaded in this case; and not long after the same Judges (with some others) joined with them in the Cases of Ship-money, invaded the propriety of our goods and estates; so that their lordships find every part of these words for which those worthy persons were accused, justified.

If any man should speak against any of the great officers, as the Chancellor or Treasurer, or any of the rest recited in those acts, as by accusing them of corruption, ill counsel, or the like, he might possibly justify himself by proving of it; but in this case it was impossible to do it, because those judgments had preceded and concluded him, for he could make none, but by alledging their own judgments which they themselves had resolved, and would not therefore allow to be crimes, which they had made for laws.

He did inform their lordships, that the Bill in the Rolls hath another title than that he did mention; this being that, that the clerks knew it by, rather than the proper title.

The words in the Case are charged *ea intentione*, which ought not to be; for it is clear, and undoubted law, that whatever is in itself lawful, cannot have an unlawful intent annexed to it. Things unlawful may be made a higher crime by the illness of the intent; for instance, taking away my horse is a trespass only, but intending to steal him makes it felony; borrowing my horse, though intending to steal him, is not felony, because borrowing is lawful; and there were no use of freedom of speech otherwise, for a depraved intention may be

annexed to any the most justifiable action. If a man eat no flesh, he may be accused for the depraved intention of bringing in the Pythagorean religion, and subverting the Christian: If a man drink water, he may be accused of the depraved intention of subverting the king's government, by destroying his revenue both of excise and custom.

No man can make a doubt, but whatsoever is once enacted is lawful; but nothing can come into an act of parliament, but it must be first offered or propounded by somebody, so that if the act can wrong nobody, no more can the first propounding; the members must be as free as the houses. An act of parliament cannot disturb the state, therefore the debate that tends to it cannot, for it must be propounded and debated before it can be enacted.

In the reign of Henry 8, when there were so many persons taken by act of parliament out of the lords house, as the Abbots and Priors, and all the religious houses and lands taken away; it had been a strange information against any member of parliament then, for propounding so great an alteration in church and state.

Besides, religion itself began then to be altered, and was perfected in the beginning of queen Edward the 6th's reign, and returned again to Popery in the beginning of queen Mary's; and the Protestant religion restored again in the beginning of queen Elizabeth's.

Should a member of parliament, in any of these times, have been justly informed against in the King's-Bench for propounding or debating any of these alterations; so that their lordships perceive the reasons and inducements the house of commons had to pass these votes now presented to their lordships?

Afterwards these Votes were read, viz.

Resolved, &c. "1. That the act of parliament 4 Hen. 8, commonly intitled, An Act concerning Richard Strode, is a general law, extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the parliament, to be communed and treated of; and is a declaratory law of the antient and necessary rights and privileges of parliament. 2. That the Judgment given 5 Car. against sir John Elliot, Denzil Hollis, and Benjamin Valentine, esquires, in the King's-bench, was an illegal Judgment, and against the freedom and privilege of parliament."

To both which Votes the lords agree with the house of commons.

Upon consideration had this day of a Judgment given in the court of King's-Bench in Michaelmas term, in the 5 Charles 1, against sir John Elliot, knt. Denzil Hollis, and Benjamin Valentine, esquires, which Judgment is found to be erroneous: It is ordered by the lords spiritual and temporal in parliament assembled, That the said Denzil Hollis, esq. (now lord Hollis, baron of Ifeild) be desired to cause the Roll of the Court of King's-Bench, wherein the said Judgment is recorded, to be brought before the lords in parliament by a Writ of Error, to the end that such further Judgment may be given upon the said case, as this house shall find meet.

Attorn. Gen. et al. v. Hollis et al.—Mich. 10 Car. secundi regis. Rot. 75.

An Information in the King's-bench against Sir John Elliot.

Memorandum, quod Rob. Heath mil. attorn. dom. regis nunc general. qui pro eodem dom. rege in hac parte sequitur in propr. persona sua ven. hic in cur. dicti dom. regis coram rege apud Westm. die Mercur. prox. post crastin. Animar. isto eodem term. et pro eodem domino rege protulit hic in cur. dicti domin. regis coram ipso rege tunc ibidem quandam informationem versus Johan. Elliot nuper de London mil. Benjamin Valentine nuper de London ar. et Denzil Hollis nuper de London ar. qui sequitur in hec verba scilicet Mild. ss. Memorandum quod Robertus Heath mil. attorn. dom. regis nunc general. qui pro eodem dom. rege in hac parte sequitur in propria persona sua ven. hic in cur. dicti dom. regis coram ipso rege apud Westm. die Mercur. prox. post crastin. Animar. isto eodem termino. Et pro eodem dom. rege dat cur. hic intelligi et informari. Quod cum dictus dom. rex pro diversis arduis et urgentibus negotiis ipsum regem et statum et defension. regn. Angl. et ecclesie Anglican. concernen. quoddam parliament. suum apud civit. suam Westm. pred. tenui ordinavit. Cumque superinde quoddam parliamentum suum debito modo inchoat. et tent. fuit apud Westm. pred. decimo septimo die Martii anno regni dicti dom. regis 3 et ibidem per diversas prorogationes continuat. usque 10 diem Martii anno regni dicti dom. regis 4. qui quidem 10 die Martii idem parliament. dissolut. fuit. Cumque antea pred. 17 diem Martii anno 3 suprad. scilicet 16 die ejusdem mensis Mar. anno 3 suprad. Johannes Elliot nuper de London mil. debito modo elect. et return. fuit in mil. pro com. Cornub. in eodem parliament. deservitur. Cumque etiam Benjamin Valentine nuper de London ar. eodem 16 die Mart. anno 3 suprad. debito modo elect. et returnat. fuit un burgens. pro burgo de St. Germans in pred. com. Cornub. in eodem parliament. deservitur. Cumque etiam Denzil Hollis nuper de London ar eodem 16. die Martii anno 3. suprad. debito modo elect. et returnat. fuit un. burgens. pro burgo de Dorchestr in com. Dors. in eodem parliament deservitur. Cumque etiam Johannes Finch mil. eodem 16 die Martii anno 3 suprad. debito modo elect. et retornat. fuit un. civium pro civitat. Cestr. in eodem parliament. deservitur. Cumque pred. 16 die Martii anno 3 suprad. prefat. J. Finch apud Westm. pred. debito modo electus et constitut. fuit Prolocutor. per commun. in eodem parliament. Et sic Prolocutor pro commun. continuavit usque dissolution. ejusdem parliament. Quod prefat. J. E. machinans et intendens omnibus viis et modis quibus poterit discord. malevolenc. murmuracionis

malitiones tam int. pred. dom. regem et magnat. prælatos, proceres et justic. suos hujus regni quam int. pred. magnat. prælat. proceres et justiciar. dicti dom. regis et reliquos subdit. suos seminare et excitare et regimen et gubernation. hujus regni Angl. tam in pred. dom. rege quam in consiliar. et ministris suis cujuscunque generis totalit. deprivare et enervare et tamult. et confusion. in omnibus statibus et partibus hujus regni Angl. introducere et ad intention. quod veri et ligei subdit. dicti domini regis cordialem suum amorem ab ipso rege retraherent in et duran. parliament. pred. scilicet 23 die Febr. anno 4 suprad. apud Westm. pred. in domo commun. parliament. ibidem et sedente eadem domo militib. civib. et burgens. adtunc et ibidem assemblat. et in eor. presentia et auditu falso et malitiose et seditiose hec falsa ficta malitiosa et scandalosa verba Anglicana alta voce dixit et propalavit, videlicet, 'The King's Privy Council, all his 'judges and his counsel learned, have con-'spired together to trample under their feet 'the liberty of the subjects of this realm, and 'the privileges of this house.' (Privileg. pred. domus commun. parliament. innuendo) cumque potestas summonend. parliament. ejusdemque continuand. adjornand. prorogand. et dissolvend. dom. regi spectat et de jure pertinet ad libitum et beneplacitum suum. cumque dictus dom. rex pro divers. urgent. causis ipsum ad hoc specialit. moven. secundo die Martii anno 4 suprad. parliament. pred. adjornavi ordinavit eodem secundo die Martii usque 10 diem ejusdem mensis Martii adtunc prox. futur. Et dictus dom. rex pred. secundo die Martii anno 4 suprad. apud Westm. pred. mandavit prefat. Johann. Finch adtunc Prolocutori pred. quod ipse eodem secundo die Martii militibus civibus et burgens. in domo commun. parliament. adtunc et ibidem assemblat. beneplacitum dicti dom. regis significaret et notum faceret quod immediate post signification. ill. ne fact. pred. domus commun. per ipsos mil. cives et burgens. adjornaretur usque 10 diem Martii adtunc prox. futur. Et superinde prefat. Johannes Finch eodem secundo die Martii apud Westm. pred. militib. civib. et burgens. in dicta domo commun. parliament. adtunc et ibidem assemblat. sedent. eadem domo publice significavit et notum fecit pred. beneplacitum dicti dom. regis quod pred. domus immediate post signification. ill. fact. usque ad pred. 10 diem Martii per seipsos adjornaretur et quod pred. Johannes Elliot B. Valentine et Denzil Hollis tempore signification. pred. per pred. Prolocutor. in forma pred. fact. presentes fuer. in domo commun. pred. et adtunc et ibidem audiverunt eandem signification. et ill. bene intellexer. pred. tamen J. E. B. V. et D. H. eodem secundo die Martii anno quarto suprad. apud West. pred. malitiose agreaver. et inter eos conspiraver. ad disturband. milites cives et burgens. de pred. domo commun. parliament. in eadem domo apud Westm. pred. adtunc et ibidem assemblat. ne illi secundum beneplacitum dicti dom. regis eis ut prefertur significat. seipsos adjornarentur. Et pred. J. E. secundum agreament. et conspiration. pred. ad malitiosa proposita et intention. pred. postea scilicet eodem secundo die Martii anno 4 suprad. apud Westm. pred. in eadem dom. commun. parliament. in presentia et aud.tu pred. milit. civium et burgens. adtunc et ibidem assemblat. alta voce falso malitiose et seditiose dixit et propalavit hec falsa ficta scandalosa malitiosa et seditiosa Anglicana verba sequen. 'The miserable condi-'tion we are in, both in matters of religion and 'policy, makes me look with a tender eye both 'to the person of the king and the subject: 'you know how Arminianism doth undermine 'us, and how popery comes upon us so open-'faced as it gives a terror to the law; that 'particularly concerning the plantation of 'Jesuits amongst us, and other things incident 'thereto, do manifestly shew it. And not only 'these men who are actors themselves, I mean 'the Jesuits, but those that are their great mas-'ters and fautors, they have the power of the 'law, and dare check magistrates in the exe-'cution of their duties; from them it comes that 'we suffer their guilt, and the fear of punishment 'that may befall them, brings us upon those rocks. 'There are among them some prelates of the 'church, the great bishop of Winchester and his 'fellows; it is apparent what they have done to 'cast an aspersion upon the honour, piety and 'goodness of the king. These are not all: but it 'is extended to some others, who, I fear, in guilt 'and conscience of their own ill deserts, do 'join their power with that bishop, and the 'rest, to draw his majesty into a jealousy of 'the parliament; amongst them I shall not 'fear to name the great Lord Treasurer, in 'whose person is, I fear, contracted all that 'which we suffer. If we look into religion and 'policy, I find him building upon the ground 'laid by the duke of Bucks, his great master; 'from him, I fear, came those ill counsels 'which contracted that unhappy conclusion of 'the last session of parliament. And whoso-'ever shall go about to break parliaments, par-'liaments will break him! I find that not only 'in the affections of his heart, but also in rela-'tion to him, he is the head of the Papists. 'They and their priests and Jesuits have all re-'lation to him, and I doubt not to fix it indu-'bitably upon him; and so far from the great-'ness and power of him comes the danger of 'our religion. For policy in that great ques-'tion of Tonnage and Poundage; that interest 'that is pretended to be the king's, is but the 'interest of that person to undermine the po-'licy of this government, and thereby to weaken 'the kingdom. It was the counsel of Hospi-'tales, chancellor to Charles the Ninth, king 'of France, that the way to weaken this king-'dom was to impeach the trade of it, and so to 'lay our walls waste and open. And I doubt 'not, but by the disquisition of a few days 'to prove that his labours are to undermine 'us; That he invites strangers to come in to 'drive our trade, or at least our merchants to 'trade in strange bottoms, which is as danger-

'ous; and this is that which imprints this fear 'in his person, and makes him to misinterpret 'our proceedings to his majesty. Now there- 'fore it will be fit for true Englishmen to per- 'form their duties, and to shew their desire of 'the safety both of the king and kingdom, and 'to resolve to defend the sincerity of our reli- 'gion, and to declare our resolutions also for 'the defence of the right of the subject, where- 'by we may declare ourselves to be freemen, 'and so the more wealthy and able to supply 'his majesty upon all occasions. And that 'we should declare all that we have suffered 'to be the effect of new counsels, to the ruin 'of the government of this state, and to make 'a protestation against all those men, whether 'greater or subordinate, that they shall all be 'declared as capital enemies to the king and 'kingdom, that will persuade the king to take 'Tonnage and Poundage without grant of par- 'liament. And that if any merchants shall 'willingly pay those duties without consent of 'parliament, they shall be declared as acces- 'saries to the rest.' Quodque pred. D. H. se- cundum agreament. et conspiration. inde inter ipsum et prefat. J. E. & B. V. ut prefertur pre- habit. postea scilicet eodem secundo die Martii anno 4 suprad. apud Westm. pred. in eadem domo commun. parliament. militib. civib. et burgens. adtunc et ibidem assemblat. et in cor. presentia et auditu alta voce falso malitiose et seditiose dixit et propalavit hec falsa ficta ma- litiosa perniciosa et seditiosa verba Anglican. sequen. videlicet, 'Whosoever shall counsel 'the taking up of Tonnage and Poundage with- 'out an act of parliament, let him be account- 'ed a capital enemy to the king and kingdom; 'and what merchant soever shall pay Tonnage 'and Poundage, without an act of parliament, 'let him be accounted a betrayer of the liber- 'ties of the subject, and a capital enemy to 'the king and kingdom.' Quodque prefat. B. V. & D. H. secundum agreament. et conspi- ration. pred. inde inter eos et prefat. J. E. pre- habit. ad intention. et proposit. pred. et ad in- tention. quod. prefat. J. E. & D. H. pred. falsa malitiosa scandalosa et seditiosa verba pred. in forma pred. et ad intention. et propo- sita pred. per eos pred. secundo die Martii anno 4 suprad. dict. et propalat. ut prefertur diceren et propalarent eodem secundo die Martii post signification. pred. pred. benepla- citi dicti dom. regis pro adjornament. dict. domus commun. parliament. ut prefertur. fiend. per prefat. Prolocutorem fact. et ante dictionem et Propalationem aliquor. verbor. pred. prefat. J. E. & D. H. eodem secundo die Martii ut prefertur dict. et propalat. prefat. Johanne Finch Prolocutor. pred. adtunc. et ibidem in quadam cathedra Anglice vocat. 'the 'Speaker's Chair' in domo pred. existen. et ex- tra pred. secundum mandat. dicti dom. regis ei in hac parte prius dat. ire conan. in et super prefat. Johannem Finch adtunc et ibidem in pace Dei et dict. dom. regis existen. vi et armis et manu forti et illicite insult. fecer. et eundem J. Finch maletractaver. et eundem J. F. in cathedra pred. contra voluntat. suam manu forti et illicite detinuer. Quodque postea eodem secundo die Martii et ante diction. pro- palation. aliquor. verbor. pred. per pred. J. E. et D. H. dict. et propalat. secundo die Martii anno 4. suprad. prefat. J. F. Prolocutor. pred. apud Westm. pred. in domo pred. extra cathe- dram pred. adtunc existen. in et super prefat. J. F. adtunc et ibidem in pace Dei et dict. do- mini regis insult. fecer. et prefat. J. Finch ma- letractaver. et violent. manu forti et illicite contra voluntat. suam in cathedram pred. traxer. truser. et impuler. per quod magn. tumult. et periculosa commotio et confusio in dom. commun. pred. et maxima terror. pred. militib. civib. et burgens. adtunc et ibidem assemblat. adtunc et ibidem mot. et excitat. fuer. contra ligeanc. suar. debit. in magn. con- tempt. et manifest. exheredationem dicti do- mini regis et derogation. persone regiminis et prerogative sue regie et in legum et status hu- jus regni Angl. subversion. et in magn. scandal. et ignominiam consiliar. de privato concilio dicti dom. regis et al. magnat. prelator. et procer. hujus regni Angl. et justiciar. et justic. dicti dom. regis ac in disturbation. et terrorem communitat. in parliament. pred. sic ut pre- mittitur assemblat. necnon ad pessimum et per- niciosissimum exemplum omn. al. in hujusmodi casu delinquen. et contra pacem ejusdem dom. regis coron. et dignitat. suas necnon contra formam statut. &c. Unde idem attorn. &c. per quod precept. fuit vic. quod non omitt. &c. Quin venire fac. eos ad respond. &c.

The Defendants plead severally for themselves, that they were Parliament-men, and that the offence was committed in parliament, and ought there to be heard and determined, and not in the King's-Bench.

Et modo scilicet die Martis prox. post octab. Sancti Martini isto eodem termino coram dom. rege apud West. ven. pred. J. E. mil. B. V. & D. H. in propr. person. suis et pred. J. E. habit. audit. information. pred. idem J. quoad supposit. transgr. offens. et contempt. pred. in informatione pred. mentionat. in dicend. et propaland. pred. Anglicana verba in informa- tione pred. superius recitat. Ac eidem J. per informationem pred. in forma pred. imposit. dic. quod ipse non intend. quod dom. rex nunc de aut pro supposit. transgr. offens. et contempt. ill. eidem J. sic imposit. in cur. dicti dom. regis nunc hic responderi velit aut debeat quia dic. quod pred. supposit. offens. transgr. et contempt. in dicend. et propaland. pred. Anglicana verba in informatione pred. men- tionat. et eidem J. in forma pred. imposit in parliament. et non in cur. dom. regis nunc hic audiri et terminari debent, &c. Et ulterius idem Johannes dic. quod ipse pred. 16 die Martii anno 3 suprad. in informatione pred. mentionat. debito modo elect. et retorn. fuit un. mil. pro pred. com. Cornub. in parliament. pred. deservitur. prout in informatione pred. superius mentionat. Quodque idem. J. tempore supposit. offens. transgr. et contempt. pred. in

dicend. et propaland. Anglicana verba pred. eidem J. in forma pred. imposit. ac duran. toto tempore parliament. pred. apud Westm. pred. fuit et remansit un. mil. pro com. Cornub. pred. pro eodem parliament. Et hoc parat. est verificare unde ex quo in informatione pred. evidenter apparet et plene liquet quod supposit. offens. transgr. et contempt. pred. in dicend. et propaland. Anglicana verba pred. eidem J. in forma pred. imposit. et per information. pred. supposit. commiss. fore commiss. fuit in pred. domo commun. parliament. pred. in parlia- ment. pred. idem J. pet. judic. si pred. dom. rex nunc hic de offens. transgr. et contempt. pred. quoad Anglicana verba pred. per ipsum J. in parliament. pred. in forma pred. dici et propalari supposit. in cur. dicti dom. regis nunc hic responderi velit aut debeat. Et quoad tot. resid. supposit. offens. transgr. et contempt. in informatione pre l. mentionat. eidem J. in for- ma pred. imposit. eidem J. dic. quod ipse non intendit quod dictus dom. rex nunc de aut pro pred. resid. offens. transgr. et contempt. pred. in eadem informatione mentionat. eidem J. su- perius in forma pred. imposit. in cur. dicti dom. regis nunc hic responderi velit aut debeat quia dic. quod resid. pred. supposit. offens. transgr. et contempt. in informatione pred. superius spec. eidem Johanni per information. pred. in forma pred. imposit. in parliament. et non in cur. dom. regis nunc hic audiri et terminari de- bent. Et idem J. ulterius dic. quod ipse pred. 16 die Martii anno 3 suprad. in informatione pred. mentionat. debito modo elect. et retornat. fuit un. mil. pro pred. com. Cornub. in pred. parliament. deservitur, prout per information. pred. superius mentionat. Quodque idem J. tempore resid. supposit. offens. transgr. et con- tempt. pred. ei in forma pred. imposit. Ac duran. toto tempore parliament. pred. apud Westm. pred. fuit et remansit un. mil. pro pred. com. Cornub. in parliament. pred. Et hoc parat. est verificare. Unde et ex quo in infor- matione pred. evident. apparet et plene liquet quod pred. resid. pred. supposit. transgr. offens. et contempt. pred. in informatione pred. men- tionat. eidem J. in forma pred. imposit. per eun- dem information. supposit. fore commiss. fuit commiss. in pred. domo commun. parliament. pred. in parliament. pred. idem J. pet. judic. si dictus dom. rex nunc de resid. pred. supposit. offens. transgr. et contempt. in informatione pred. mentionat. eidem J. in forma pred. im- posit. in parliament. pred. in forma pred. fieri supposit. in cur. dom. regis nunc hic responderi velit aut debeat, &c.

Et pred. Benjamin Valentine habit. audit. information. pred. idem B. dic. quod ipse non in- tendit quod dictus dom. rex nunc de aut pro sup- posit. offens. et contempt. pred. in informatione pred. mentionat. eidem B. per eandem informa- tion. imposit. in cur. dicti dom. regis nunc hic re- sponderi velit aut debeat. Quia dic. quod pred. supposit. offens. transgr. et contempt. in inform- atione pred. mentionat. eidem B. per eandem informationem in forma pred. imposit. in par- liament. et non in cur. domini regis nunc hic audiri et terminari debent. Et idem B. ulte- rius dicit quod ipse pred. 16 die Martii anno 3 suprad. in informatione pred. mentionat. debito modo elect. et retorn. fuit un. burgens. pro predicto burgo de St. Germans in pred. com. Cornub. in pred. parliament. deservitur, prout per information. pred. superius men- tionat. Quodq; idem B. tempore supposit. of- fens. transgr. et contempt. pred. ei in forma pred. imposit. Ac duran. toto tempore parliament. pred. apud Westm. pred. fuit et remansit. un. burgens. pro pred. burgo. de St. Germans in eodem parliament. Et hoc parat. est verifica- care. Unde et ex quo in informatione pred. evident. apparet et bene liquet quod supposit. offens. transgr. et contempt. pred. in informa- tione pred. mentionat. eidem B. in forma pred. imposit. per information. pred. supposit. fore commiss. fuit commiss. in pred. domo commun. parliamenti pred. Idem B. pet. judic. si dictus dominus rex nunc de offens. transgr. et con- tempt. pred. sic sibi imposit. per ipsum B. in parliament. predict. fieri supposit. in cur. dicti dom. regis nunc hic responderi velit aut de- beat, &c.

Et pred. Denzil Hollis habit. audit. informa- tion. idem D. quoad supposit. transgr. offens. et contempt. pred. in informatione pred. men- tionat. in dicend. et propaland. pred. Anglicana verba in informatione pred. superius recitat. Ac eidem D. per information. pred. in forma pred. imposit dic. quod ipse non intendit quod dominus rex nunc de aut pro supposit. transgr. offens. et contempt. ill. eidem. D. sic imposit. in cur. dicti domini regis nunc hic responderi velit aut debeat. Quia dic. quod pred. sup- posit. offens. trans. et contempt. in dicend. et propaland. pred. Anglicana verba in informa- tione pred. mentionat. eidem D. in forma pred. imposit. in parliament. et non in cur. dom. regis nunc hic audiri et terminari debeant, &c. Et ulterius idem D. dic. quod ipse pred. 16 die Martii anno 3 suprad. in informatione pred. mentionat. debito modo elect. et retornat. fuit un. burgens. pro pred. burgo de Dorchester in pred. com. Dors. in parliament. pred. deservitur, prout in informatione pred. superius mentionat. Quodque idem D. tempore supposit. offens. transgr. et contempt. pred. in dicend. et pro- paland. Anglicana verba pred. eidem D. in forma pred. imposit. ac duran. toto tempore parliament. pred. apud Westm. pred. fuit et remansit. un. burgens. pro pred. burgo de Dor- chester in eodem parliament. Et hec parat. est verificare. Unde et ex quo in informatione pred. evident. apparet et plene liquet quod sup- posit. offens. transgr. et contempt. pred. in di- cend. et propaland. Anglicana verba pred. eidem D. in forma pred. imposit. per informa- tionem pred. supposit. fore commiss. fuit com- miss. in domo pred. commun. parliament. pred. parliament. pred. idem D. pet. judic. si dictus dom. rex nunc de offens. transgr. et contempt. pred. quoad Anglicana verba pred. per ipsum D. in parliament pred. in forma pred. dici et propalari supposit. in cur. dom. regis nunc hic responderi velit aut debeat. Et quoad tot.

resid. supposit. offens. transgr. et contempt. in informatione pred. mentionat. eidem D. superius in forma pred. imponit. idem D. dicit quod ipse non intendit quod dictus dom. rex nunc de aut pro pred. resid. offens. transgr. et contempt. pred. in eadem informatione mentionat. eidem D. superius in forma predict. imposit. in cur. dicti dom. regis nunc hic responderi velit aut debeat. Quia dic. quod pred. resid. supposit. offens. transgr. et contempt. in informatione pred. superius specificat. eidem D. per information. pred. in forma pred. imponit. in parliament. et non in cur. dom. regis nunc hic audiri et terminari debent. Et idem D. ulterius dic. quod ipse pred. 10 die Martii anno 3 suprad. in informatione pred. mentionat. debito modo elect. et returnat. fuit un. burgens. pro pred. burgo de Dorchester in pred. com. Dors. in pred. parliament. deservitur, prout per information. pred. superius mentionatur. Quodque idem D. tempore resid. supposit. offens. transgr. et contempt. pred. ei in forma pred. imposit. ac duran. toto tempore parliament. pred. apud Westm. pred. fuit et remansit un. burgens. pro pred. burgo de Dorchester in pred. com. Dors. in parliament. pred. Et hoc parat. est verificare. Unde et ex quo in informatione pred. evident. apparet et plene liquet quod pred. resid. supposit. offens. transgr. et contempt. pred. in informatione pred. mentionat. eidem D. in forma pred. imposit. per eandem informationem suppon. fore commiss. in pred. domo commun. parliament. pred. in parliament. pred. idem D. pet. judic. si dictus dom. rex nunc de resid. predict. supposit. offens. transgr. et contempt. in informatione pred. mentionat. eidem D. in forma pred. imposit. in parliament. pred. in forma pred. fieri supposit. in cur. dom. regis hic responderi velit aut debeat, &c.

The Attorney-General demurs to the Pleas severally.

Et prefat. Robertus Heath mil. qui sequitur, &c. quoad pred. placitum pred. J. Elliot pro eodem dom. rege dic. quod placitum ill. prefat. J. in forma pred. superius placitat. materiaque in placito pred. content. minus sufficien. in lege existunt ad precludend. cur. hic a jurisdiction. sua audiend. et terminand. offens. transgr. et contempt. in informatione pred. mentionat. eidem J. per eandem informationem in forma pred. impo-it. Unde pro defectu sufficien. respon. in hac parte pet. judic. Et quod prefat. J. dicto dom. regi in cur. hic respondeat de et in premiss. &c.

Et prefat. R. H. mil. qui sequitur, &c. quoad pred. placitum prefat. B. V. pro eodem domino rege dic. quod placitum ill. prefat. B. in forma pred. superius placitat. materiaque in eodem content. minus sufficien. in lege exist. ad precludend. cur. hic a jurisdiction. sua audiend. et terminand. offens. transgr. et contempt. pred. in informatione pred. mentionat. eidem B. per eandem information. in forma pred. imposit. Unde pro defectu sufficien. respons. in hac parte pet. judic. et quod prefat. B. dicto dom. regi in cur. hic respondeat de et in premiss. &c. Et simile quo ad placitum Denil Hollis.

The Defendants severally join in Demurrer.

Et pred. J. Elliot mil. ut prius dic. quod placitum pred. per ipsum J. superius in forma pred. placitat. materiaque in placito pred. content. bon. et sufficien. in lege existunt ad precludend. cur. hic a jurisdiction. sua audiend. et terminand. offens. transgr. et contempt. pred. in informatione pred. mentionat. eidem Johanni per eandem informationem in forma pred. imposit. Quod quidem placitum materiamque in eodem placito content. idem J. E. mil. parat. est verificare. Unde ex quo idem attorn. dicti dom. regis pro eodem dom. rege ad placitum ill. non respond. nec ill. aliqualit. dedic. sed verification. ill. admittere omnino recusat pet. judic. et quod ipse idem J. de offens. transgr. et contempt. pred. in informatione pred. mentionat. eidem J. per eandem informationem in forma pred. imposit. per cur. hic dimittatur, &c. Et sic de verbo in verbum pro Valentine et Hollis separatim.

The Attorney-General prays that the Defendants may answer.

Et quia cur. dom. regis hic de judic. suo inde reddend. nondum advisatur dies inde dat. est tam prefat. Roberto Heath mil. qui sequitur, &c. quam pred. J. E. B. V. & D. H. in statu quo nunc, &c. usque octab. Sancti Hillar. coram dom. rege ubicunque, &c. de judicio suo inde audiend. eo quod cur. nondum, &c. Ad quas quidem octab. Sancti Hillar. coram dom. rege apud Westm. ven. tam prefat. R. H. qui sequitur, &c. quam pred. J. E. B. V. & D. H. in propr. person. suis. Et prefat. R. H. qui sequitur, &c. pro eodem dom. rege pet. judic.

Judgment that the Pleas to the Jurisdiction of the King's-Bench are insufficient.

Et quod pred. J. E. B. V. D. H. dicto dom. regi in cur. hic respondeant et eor. quilibet respondeat de et in premiss. &c. Super quo visis lectis et audit. omnibus et singulis premiss. pro eo quod videtur cur. hic quod separal. placita pred. per prefat. J. E. B. V. & D. H. in forma pred. superius placitat. materiaque in separal. placitis pred. content. minus sufficien. in lege existunt ad precludend.

The Defendants ordered to answer over.

Cur. hic a jurisdictione sua audiend. et terminand. offens. transgr. et contempt. pred. in informatione pred. mentionat. eisdem J. E. B. V. & D. H. per eandem information. in forma pred. imposit. dictum est eisdem J. E. B. V. & D. H. quod ipsi iidem J. E. B. V. & D. H. dicto dom. regi in cur. hic respondeant & eor. quilibet respondeat de et in premiss. in information pred. superius content. &c. Et super hoc dies dat. est per cur. eisdem J. E. B. V. & D. H. coram dom. rege ubicunque, &c. usque diem Veneris prox. post octab. Pur. beate Marie Virgin. ad information. predict. interloquend. et tunc ad respond. periculis suis.

Judgment against them for want of Pleas in Chief.

Ad quem diem coram dom. rege apud Westm. ven. tam prefat. R. H. qui sequitur, &c. quam prefat. J. E. B. V. & D. H. in propr. personis suis. Et prefat. J. E. B. V. & D. H. licet ipsi eorum premonit. et solempnit. exact. ad respond. nihil dicunt in barr. sive exoneration. information. pred. per quod idem dominus rex remanet versus eos indefense. Ideo cons. est quod pred. J. E. B. V. & D. H. capiantur ad satisfaciend. dom. regi de finib. suis occasione transgr. et contempt. pred. Ac quod habeant imprisonment. corpor. suor. ad voluntat. ipsius dom. regis, et quod antequam deliberentur quilibet eor. inveniat. sufficien. secur. de se bene gerend. erga dictum dominum regem et cunctam populum suum. Et quod pred. J. E. constituatur locumtenen. Turris domini regis London. salvo custodiend. quousque, &c. Quod, &c. pred. B. V. & B. H. committantur Mar. marese. domini regis coram ipso rege salvo custodiend. quousque, &c.

Et finis ejusdem J. E. afferatur per cur. occasione predict. ad 2,000*l.*

Et finis ejusdem B. V. afferatur per cur. occasione pred. ad 500*l.*

Et finis ejusdem D. H. afferatur per cur. ad 1,000 mercas.

Afterwards the Attorney-General comes into Court, and acknowledges that Hollis has paid his Fine.

Postea scilicet die Lune prox. post octab. Pur. beate Marie Virgin. anno regni dom. Caroli nunc regis Angl. &c. 12. coram dom. rege apud West. ven. Johannes Banks mil. attorn. dom. regis nunc general. qui pro eodem dom. rege modo in hac parte sequitur et pro eodem dom. rege dic. et cognovit quod pred. D. H. solvit et satisfecit pred. 1,000 mercas recept. ad Scaccarii dicti dom. regis ad usum dicti dom. regis in plen. satisfaction. pred. finis super ipsum D. pro offens. pred. in informatione pred. superius nominat. per cur. hic in ipsum impost. pront per constat. sub manu Edwardi Wardour mil. clerici pellium recept. Scaccarii dicti dom. regis hic in cur. ostens. plene liquet. Et pro eodem dom. rege idem attorn. dicti dom. regis general. cognovit dictum dom. regem inde fore satisfactum. Ideo idem D. H. de eisdem 1,000 mercis est inde quiet.

At another time after, the Attorney brings into Court the king's Letters Patents under his privy-seal, whereby the king remits to Valentine his Fine, and all the rest of the Judgment; and prays the same may be enrolled and allowed.

Postea scilicet die Mercur. prox. post quindecim Pasche anno regni dicti dom. regis nunc Angl. &c. 16 coram dom. rege apud Westm. ven. Johannes Banks mil. attorn. dom. regis nunc general. in propr. persona sua. Et protulit in cur. dicti dom. regis coram dom. rege nunc ibidem quoddam breve ipsius dom. regis de privat. sigillo sibi et al. direct. et petiit illud irrotulari et allocari, cujus quidem brevis tenor sequitur in hæc verba: 'Charles, by the 'grace of God, king of England, Scotland, 'France, and Ireland, Defender of the Faith, '&c. To the lord high-treasurer of England, 'chancellor, under-treasurer, and barons of 'our Exchequer, and all other officers and ministers of the same court for the time being, 'and to the chief-justice, and the rest of our 'justices of our court of King's-Bench, and to 'our attorney-general, and all other officers 'and ministers of the same court for the time 'being, greeting. Whereas in Michaelmas 'term, in the tenth year of our reign, upon an 'Information in our name exhibited in our 'court of King's-Bench, against Benjamin Valentine, esq.; and others, for divers offences, 'trespasses, and contempts therein mentioned, 'the said Benjamin Valentine, by Judgment of 'the same court, was fined to us in the sum of '500*l.* and to be committed to our prison of 'our Marshalsea during our pleasure; and 'that he shall find sufficient security for his 'good behaviour to us and our people, as by 'the said Information and Judgment there- 'upon remaining upon record in our said court 'of King's-Bench, more at large may appear. 'And whereas the said B. V. hath been restrained of his liberty since the last parliament for not satisfying the said fine so imposed on him, as aforesaid. Now know ye, That 'we of our special grace have remised, released, and quit-claimed, and by these presents, 'for us, our heirs and successors, do remise, release, and quit-claim unto the said B. V. the 'said fine or sum of 500*l.* by the Judgment of 'our said court on him the said B. V. imposed 'as aforesaid. And all commitment, imprison- 'ment, and other matters whatsoever adjudged 'or inflicted upon him by our said court, for or 'by reason of the trespasses, offences or contempts aforesaid. Wherefore we do by these 'presents will and require, as well the lord- 'treasurer, chancellor, under-treasurer, and 'barons of our Exchequer, as the justices of 'our court of King's-Bench, and the officers 'and ministers of the said several courts respectively, to whom it shall or may appertain, 'that they, and every of them respectively, at 'all times hereafter do forbear, and utterly surcease to make or grant forth any extents, 'seizures, executions, or other process whatsoever, against the said B. V. his heirs, executors or administrators, or his or their lands, 'tenements, hereditaments, goods or chattels, 'for or concerning the levying of the said fine 'or sum of 500*l.* or any part thereof. And 'that they take order as well for his full and 'clear discharge thereof, as of and from his 'commitment and imprisonment as aforesaid. 'And these presents, or the enrolment thereof, shall be unto them, and every of them to 'whom it shall or may appertain, a sufficient 'warrant and discharge in that behalf. And 'lastly, we will, and by these presents autho- 'rise and require our attorney-general for the 'time being, for us, and in our behalf, to ac-

'knowledge satisfaction upon record of and for 'the said fine of 500*l.* on the said B. V. by 'Judgment of our said court so imposed as 'aforesaid. Whereby he may be fully and ab-'solutely acquitted and discharged thereof 'against us, our heirs and successors; and 'these presents, or the enrolment thereof, shall 'be unto our said attorney-general for the 'time being, a good and sufficient warrant in 'that behalf. Given under our privy-seal at 'our palace of Westminster, the 7th day of 'March, in the fifteenth year of our reign.'

Judgment of the Court at the Attorney's prayer, that Valentine be discharged.

Et super hoc idem J. B. miles attorn. dicti dom. regis general. pro eodem dom. rege virtute brevis de privat. sigillo predict. dicit et cognovit ipsum dominum regem fore plenar. satisfact. de pred. fin. 500*l.* super ipsum B. V. pro offens. predict. in informatione predict. mentionat. per cur. hic ut prefertur imposit. et pet. quod pred. B. V. virtute brevis pred. de imprisonament. suo ads. ipsius dom. regis et de judic. pred. exoneretur et dimittatur super quo vis. et per cur. hic intellect. omnibus et singulis premiss. cons. est per cur. quod pred. B. V. pro offens. pred. in informatione pred. superius mentionat. per cur. hic ut prefertur imposit. sit inde quiet. et eat inde sine die, et quod ipse idem B. V. de imprisonament. suo ad sect. dom. regis et de judic. pred. versus ipsum B. in forma pred. reddit exoneretur et dimittatur, &c.

D. Hollis, now Lord Hollis, brings a Writ of Error upon the said Judgment, returnable in Parliament.

Postea scilicet 12 die Febr' anno regni dom. nostri Caroli secundi nunc regis Angl. &c. 20 dominus rex mandavit dilecto et fidel. suo Johanni Kelynge mil. capital. justic. dicti dom. regis ad placita coram ipso rege tenend. assign. breve suum clausum in hæc verba, Carolus secundus, &c. dilecto et fidel. nostro Johanni Kelynge mil. capital. justic. nostro ad placita coram nobis tenend. assign. salutem. Quia in record. process. ac etiam in redditione judicii super quandam informationem in cur. dom. Caroli primi nuper regis Angl. patris nostri precharissimi coram ipso nuper dom. rege exhibit. per Robertum Heath mil. tunc attorn. general. ipsius nuper dom. regis, qui pro eodem domino rege in ea parte sequebatur versus Johannem Elliot nuper de London mil. B. Valentine nuper de London pred. ar. et D. Hollis nuper de Lond. pred. ar. de divers. malegestur. ut dicitur error intervenit manifestus de grave dampn. ipsius D. H. modo dom. Hollis baron. de Ifeild sicut ex querela sua accepimus. Nos errorem siquis fuerint modo debito corrigi et eidem D. H. modo domino Hollis baron. de Ifeild plenum et celerem justic. fieri volen. in hac parte vobis mandamus quod si judic. inde reddit. sit tunc record. et process. pred. cum omnibus ea tangen. nobis in present. parliament. nostrum distincte et aperte mittatis et hoc breve ut inspect. record. et process. pred. ulterius inde assensu dominor. spiritual. et temporal. in eodem parliament. existen. pro error. ill. corrigend. quod de jure et secundum legem et cons. regni nostri Angl. fuerit faciend. T. meipso apud Westm. 12 die Febr. anno regni nostri 20. Norbury.

The Lord Chief Justice delivers the Record.

Virtute cujus quidem brevis dictus capital. justic. record. pred. dom. regi in present. parliament. propr. manibus protulit secundum exigenc. ejusdem brevis et postea scilt. 8 die Martii anno regni dom. regis nunc Caroli secund 20 coram ipso rege in presenti parliament. remanent' D. H. modo dom. Hollis baro de Ifeild per Samuel. Astry attorn. suum et dicit quod in record. et process. pred. ac etiam in redditione judicii pred. manifest. est errat. videlicet in hæc verba in informatione pred. mentionat. fore dicti et propalat. in domo commun. parliament. per pred. D. H. modo dominum Hollis tunc existen. burgens. pro burgo de Dorchester in tunc presen. parliament. deservien' audiri et terminari in domo commun. parliament. debeant per legem terre et non in cur. domini regis et in hoc quod per information. in dicto record. mentionat. idem D. H. modo dominus Hollis onaratur cum dictione et propalatione quorundam verbor. in domo commun. parliament. ac etiam cum transgrs. et insult. fact. vi et armis super Johannem Finch Prolocutor. ejusdem tunc domus commun. parliament. Ad que idem D. H. modo dominus H. quo separal. placita placitabat tamen unicum tantum judic. reddit. est de utroque per cur. et unicus finis ubi duo judicia reddi et duo fines imponi debuissent quia e forte transgr. et insult. audiri et terminari forte possit aut debeat in cur. dom. regis coram ipso rege tamen dictio et propalatio verbor. quorumcunque in domo commun. parliament. per burgens. in eodem parliament. deservien. ubicunque in parliament. audiri seu terminari non debent, &c.

Et Galfridus Palmer mil. et bar. attorn. domini regis nunc general. qui per eodem dom. rege in hac parte sequitur presen. in propr. persona sua pro eodem dom. rege dicti quod nec in record. et process. pred. nec in redditione judicii pred. in ullo est errat. et pet. &c.

A Message was sent to the House of Commons by sir William Child and sir Justinian Lewin, to acquaint them, that the Lords do agree to those Votes which were delivered at the Conference yesterday.

Die Mercurii, 15 April, 1668.

"Whereas counsel have been this day heard at the bar, as well to argue the Errors assigned by the lord Hollis, baron of Ifeild, upon a Writ of Error depending in this house, brought against a Judgment given in the court of King's-Bench in 5 Car. 1, against the said lord Hollis, by the name of Denzil Hollis, esq. and others; as also to maintain and defend the said Judgment on his majesty's behalf: Upon due consideration

had of what hath been offered on both parts thereupon, the Lords spiritual and temporal in parliament do order and adjudge, That the said Judgment given in the court of King's-Bench in 5 Car. 1, against the said Denzil Hollis, and others, shall be reversed."

The Form whereof (to be affixed to the Transcript of the Record) followeth:

'Et quia curia parliamenti de judicio suo de 'et super præmissis reddend' nondum advisatur, 'dies datus est tam prædict' Galfrido Palmer 'militi et baronet' qui sequitur, &c. quam præ-'dict' Denzil domino Hollis coram eadem curia 'usque ad diem Mercurii decimum quintum 'diem Aprilis tunc proximum sequentem apud 'Westmonast. in comitat' Middl' de judicio suo 'inde audiend' eo quod curia prædict' nondum, '&c. Ad quem diem coram curia prædict' 'Galfridus Palmer qui sequitur, &c. quam præ-'dictus Denzil dominus Hollis in propriis per-'sonis suis. Super quo, visis, et per eandem 'curiam nunc hic plenius intellectis omnibus et 'singulis præmissis, maturaque deliberatione 'inde habita, consideratum est per curiam præ-'dictam, quod judicium prædict' ob errores 'prædictos et alios in recordo et processu præ-'dictis compertos, revocetur, adnulletur et pe-'nitus pro nullo habeatur. Et quod prædict' 'Denzil dominus Hollis ad omnia quæ idem 'Denzil dominus Hollis occasione judicii præ-'dict. amisit, restituatur.'

Jo. Browne, Cleric. Parliamentorum.

It seems to be but just towards the characters of the Judges of this time to add the following passages from Kennet:

"The urgent necessity of Supplies, to be in some measure suitable to the king's honour, and the very nation's support, must exercise the king's council in finding out all possible ways and means to bring in money. In order to this urgent end, the king sent his letters, dated May 13, 1630, to the Judges and Attorney-General, to frame and publish certain orders for execution of the office of Receiver and Collector of Fines and Forfeitures, erected by his late father of blessed memory, and by his present majesty confirmed to John Chamberlayn his majesty's physician, and Edward Brown, esq. The Judges met and concluded, that the said letters patents were both against law and his majesty's profit, and sent an account of the exceptions and irregularities in the said patent, in a letter from all the Justices and Barons, directed severally to the Lord Keeper and Lord Treasurer. And though this did well demonstrate the integrity of the Judges, that they would never prostitute an opinion to the mere interest of the king; and did as much vindicate his majesty's honour, that he would insist upon no method, though begun by his father, which the Judges of his realm should not pronounce to be strictly lawful; yet, however, this too was applied to the prejudice of the court, as if they were pursuing methods which the very Judges condemned for arbitrary and illegal.

"Westminster-hall was exercised with many singular cases, that serve much to express the disposition of the times. In Easter Term sir Henry Martyn, LL.D. and Judge of the Admiralty, made a great complaint to the king against the Judges of the King's-Bench, for granting prohibitions against his court: and upon this occasion the Judges were called before the king, where they stoutly justified their proceedings in those cases to be according to law, and from whence they could not depart by virtue of their oaths. About the next Term, the feoffees in trust for the buying in of impropriations to be bestowed upon preaching ministers, were brought into the Exchequer for breach of their trust in not augmenting poorer vicarages, but giving arbitrary pensions to lecturers and disaffected preachers: their corporation was dissolved, and their fund and stock adjudged to the king; of which we must take some farther notice in our view of church affairs. Nigh the same time, Huntley, a minister in Kent before mentioned, having been censured and imprisoned by the High Commission Court, brought now his action of false imprisonment against the keeper Mr. Barker, and some of the commissioners by name. The Attorney General moved, that the action might lay against the gaoler only, and by no means against any of the persons in the High Commission: but after long debate, the Court ordered that two of the commissioners should answer. The bishop of London made the king sensible, that the authority of his High Commission Court would fall to nothing, if the Judges of it must be now exposed to personal actions. Upon which the king sent his advocate, Dr. Ryves, to the Lord Chief Justice, requiring him to proceed no farther in that cause till he had spoken with his majesty. The Chief Justice answered, 'We receive the Message;' and then consulted with the Judges, and they came to this resolution, that 'they conceived such a message not to 'stand with their oaths, which commanded an 'indefinite stay of a cause between party and 'party, that might stop the course of justice so 'long as the king would.' And they farther declared the doctor to be no fit messenger, all messages from the king to them being usually by the lord keeper, or the attorney general, in causes relating to the administration of justice. By the court's desire, the chief justice acquainted the lord keeper and the bishop of London, who both agreed that the message was mistaken, and that the king's mind was not to command a stop, but to desire as much slowness as might stand with justice. After this, upon the importunity of the commissioners, who would no longer act if thus exposed to suits at common law; the king assumed the matter to himself, and sending for the Judges, charged them with 'express command, that 'they should not put the commissioners to an-'swer.' The Judges stoutly replied, that they could not, without breach of their oaths, perform that command. Afterwards the matter was handled at the council-table in presence

of the Judges; where, after long hearing, it was determined, that the Judges had done their duty, and that the commissioners ought to answer. Toward the end of Trinity term the sickness encreasing in Southwark, Hobart, Stroud, and Valentine, three of the late members, unprisoned in the Marshalsea, sued to the Judges of the King's-bench to be removed to the Gate-house, and were by writ from the court so removed. But Mr. Selden, being at the same time in the Marshalsea, had forgot or omitted to make the like application to the King's-bench till the term was over, and the Judges in the circuit: After which he sued to the Lord-Treasurer for the like favour of removal, and by warrant from his lordship was accordingly so removed. But in Michaelmas term the Judges called on the marshal for his prisoner Selden; and he producing the treasurer's warrant by the king's direction, they declared such warrant to be illegal, and sent their writ to remand the prisoner back again to the Marshalsea. In the Hilary term following, the attorney-general exhibited two several informations against sir Miles Hobart, kt. and William Stroud, esq.; (who by writ from the King's bench had been removed from the Marshalsea to the Gate-house) for escapes out of prison, proving that Stroud had resided with a keeper in his own chambers at Gray's-Inn; and Hobart had continued with a keeper at his lodgings in Fleet-street. The jury returned their verdicts severally Not Guilty: And the Judges resolved, that the prison of the King's-bench is not any local prison confined to one place; but that every place where any person is by authority of that court restrained of his liberty, is a prison. These several cases, and the decision of them, do abundantly prove, that the present set of Judges were no servile creatures of the court; and that the king did not insist upon their obsequious compliance with him; but they gave their judgments with freedom and courage, and the king acquiesced in their opinion, though contrary to his own."

That the court of King's-bench can come to any prison, see Rex *v.* Hart and White, in dom. proc. May 1809, and the cases and authorities cited in that case.

A

TABLE

Containing THE TITLES of all

THE STATUTES,

PUBLICK and PRIVATE,

From the First Year of King HENRY VIII.

To the Seventh Year of King EDWARD VI.

PUBLICK ACTS.

Anno primo Henrici VIII.

PRIVATE ACTS.

Anno primo Henrici VIII.

PUBLICK ACTS.

Anno tertio Henrici VIII.

PRIVATE ACTS.

Anno tertio Henrici VIII.

PUBLICK ACTS.

Anno quarto Henrici VIII.

PRIVATE ACTS.

Anno quarto Henrici VIII.

PUBLICK ACTS.

Anno quinto Henrici VIII.

PRIVATE ACTS.

Anno quinto Henrici VIII.

Saving of the King's Grants of Liberties.

III. Provided always, That this Act concerning the Forfeiture be not prejudicial nor hurtful to any Person or Persons having Grant of our Sovereign Lord the King, or of any of his noble Progenitors, by his Letters Patents of such Forfeiture, but that they and every of them shall have and enjoy the same according to their former Grants and Liberties.

CAP. VIII.

The Act concerning *Richard Strode*, for Matters reasoned in the Parliament.

'LAMENTABLY complaineth and sheweth unto your most discreet Wisdoms in this present Parliament assembled, *Richard Strode* Gentleman of the County of *Devonshire* One of the Burgesses of this honourable House for the Burgh of *Plimton* in the County aforesaid, that where the said *Richard* condescended and agreed with other of this House, to put forth certain Bills in this present Parliament against certain Persons, named Tinners in the County aforesaid, for the Reformation of the perishing, hurting, and destroying of divers Ports, Havens, and Creeks, and other Bills for the common weal of the said County, the which here in this high Court of Parliament should and ought to be communed and treated of: And for because the said *Richard* is a Tinner, for the Causes and Matters afore rehearsed, one *John Furse* Tinner, Under Steward of the Steinery in the said County, in and at Four Courts of the said Steinery at divers Places and Times before him severally holden in the said County, he and other have condemned the said *Richard* in the Sum of One hundred and threescore Pounds; that is to wit, at every Court Forty Pounds, and by the Procurement of the said *John Furse*, at the said Four several Courts and Lawdays, in the said Steinery, by him holden, in this Manner published and said, that the same *Richard* at the last Parliament holden at *Westminster* would [have] avoided and utterly destroyed all Liberties, Privileges, and Franchises concerning the Steinery: by Reason whereof the said *Richard*, upon Four Bills had and made thereof by the said *John Furse* and other, caused that the said *Richard* was presented and found guilty of the Premises in every of the said Courts in Forty Pounds to be lost and forfeit by him, by Reason of [an] Act and Ordinance by Tinners made and had at a Place in the said County called *Crockerentor*: the Tenor of the which Act appeareth in a Schedule to this Bill annexed: to the which the said *Richard* was never warned nor called to make Answer to the Premises, contrary to all Laws, Right, Reason, and good Conscience: And for the Execution of the same, One *John à Gwilliam* upon a Surmise by him made to the King's Highness to the said Condemnation to be to his Grace forfeit, thereof attained a Bill assigned of Twenty Pounds Parcel of the said Hundred and threescore Pounds, to be to him granted by the said King's Highness: whereupon the said *John à Gwilliam* and other caused the said *Richard* was taken and imprisoned in a Dungeon and a deep Pit under Ground in the Castle of *Lidford* in the said County, and there and elsewhere remained by the Space of Three Weeks and more, unto such Time he was delivered

'livered by a Writ of Privilege out of the King's Exchequer at *Westminster*, for that he was One of the Collectors in the said County for the First of the Two *Quindeims* granted at and in this present Parliament: the which Prison is One of the most anoyous, contagious, and detestable Place within this Realm; so that by Reason of the same Imprisonment he was put in great Peril and Jeopardy of his Life, and the said *Richard* so being in Prison, and the said *John à Gwilliam* seeing the same cruel Imprisonment of the said *Richard*, intreated and instantly desired one *Philip Furse* (then being Keeper of the said Prison) strictly to keep the said *Richard* in Prison, and to put Irons upon him to his more greater Pain and Jeopardy, and to give him but Bread and Water only, to the Intent to cause the said *Richard* to be fain to content and pay him the said Twenty Pounds; and for the same promised the said Keeper Four Marks of Money; for the which Four Marks the said *Richard* for to be eased of his Irons and painful Imprisonment aforesaid (for Safeguard of his Life) promised and granted to pay the said Keeper Four Marks; whereof he paid the said Keeper in Hand Thirteen Shillings Four-pence: And over that the said *Richard* for to be eased of his said painful Imprisonment, was also of Necessity driven to be bounden to *Thomas Denis*, Deputy unto Sir *Henry Marnie* Knight, Warden of the said Steinery, in Obligation of the Sum of an Hundred Pounds. Upon Condition whereof Part is as hereafter followeth: that is to say, that if the above bound *Richard Strode*, defend and save harmless the said *Thomas Denis*, and to use himself as a true Prisoner during the Time it shall please the King to have him Prisoner in the Castle of *Lidford*, and also to do nothing whereby he shall in the Law be deemed out of Prison, and other Articles comprised in the said Condition, the which the said *Richard* perfectly remembereth not:' Wherefore the Premises by your great Wisdoms tenderly considered, the said *Richard* humbly prayeth, that it may be ordained, established, and enacted, by the King our Sovereign Lord, and by the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, that the said Condemnation and Condemnations of the said Hundred and threescore Pounds, and every Parcel thereof, and Judgments and Executions had or to be had for the same, and also the said Obligation and all Demands had or to be had for the Premises, or any of them, to be utterly void against the said *Richard*, and of none Effect.

Judgment against *Richard Strode* void.

II. And over that it be enacted by the said Authority, That all Suits, Accusements, Condemnations, Executions, Fines, Amerciaments, Punishments, Corrections, Grievances, Charges, and Impositions, put or had, or hereafter to be put or had unto or upon the said *Richard*, and to every other of the Person or Persons afore specified, that now be of this present Parliament, or that of any Parliament hereafter shall be, for any Bill, speaking, reasoning, or declaring of any Matter or Matters, concerning the Parliament to be communed and treated of, be utterly void and of none Effect.

Fines for Parliament Matters void.

III. And over that it be enacted by the said Authority, That if the said *Richard Strode*, or any or all the said other Person or Persons, hereafter be vexed, troubled, or otherwise charged for

Action on the Case given to the Party grieved.

any Cauſes, as is aforeſaid, that then he or they and every of them ſo vexed or troubled, of and for the ſame, to have Action upon the Caſe againſt every ſuch Perſon or Perſons ſo vexing or troubling any contrary to this Ordinance and Proviſion, in the which Action the Pary grieved ſhall recover Treble Damages and Coſts. And that no Protection, Eſſoign, nor Wager of Law in the ſaid Action in anywiſe be admitted or received.

Schedule referred to.

'BE it inquired for our Sovereign Lord the King, That whereas at the Parliament holden at *Crockerentor*, before *Thomas Denis*, Deputy to Sir *Henry Marnie* Knight, Warden of the Steinery, the Twenty-fourth Day of *September*, the Second Year of the Reign of King *Henry* the Eighth, It was ordained, eſtabliſhed, and enacted, that (from the Day aforeſaid) it ſhall be lawful for every Man to dig Tin within the County of *Devonſhire*, in all Places whereas Tin may be found; and alſo to carry the Water to their Works without any Let or Trouble of any Perſon or Perſons, according to our Uſages and Confirmations of our Charter, and according to our Cuſtom out of Mind; and if any Perſon or Perſons let, trouble, or vex any Man to dig Tin, or to carry Water for the ſame, contrary to our old Cuſtom and Uſage, and if it be found by the Verdict of Twelve Men at the Law Day, he that ſo letteth, vexeth or troubleth any ſuch Perſon or Perſons ſhall fall in the Penalty of Forty Pounds as oft as he ſo vexeth or troubleth: the One Half to my Lord Prince, and the other Half to him that was ſo letted, vexed, or troubled: And a *Fieri facias* to be awarded, as well for my Lord Prince as for the Party, if One *Richard Strode* of *Plimton*, Tinner, at the Parliament holden at *Weſtminſter* the Fourth Day of *February* laſt paſt, letted, vexed, and troubled One *William Read* the younger, and *Ellis Elford* Tinner, and all other Tinners in the ſame Parliament for digging of Tin in the ſeveral Soil of the ſaid *Richard* and other Perſons contrary to this our Act made.'

[*For the other Acts of this Year, uſually called* Private Acts, *See the Table of Titles at the Beginning of the Volume.*]

Their Lordſhips, or any Five of them, to meet on *Friday* Morning, at Nine of the Clock, in the Prince's Lodgings.

Meſſage from H. C. with Bill.

A Meſſage was brought from the Houſe of Commons, by Sir *Charles Harbord* and others; which conſiſted of theſe Particulars:

1. To preſent Two Bills, to which they deſire their Lordſhips Concurrence:

1. "An Act to regulate the Trade of Silk "Throwing."

2. "An Act to prevent Theft and Robberies on "the Highways."

2. To return the Bill concerning Sir *Thomas Hobbithwayte*, wherein they agree in leaving out the Proviſo.

3. They return the Bill for taxing Lands in the Great Level of the Fens, having amended it according to the Amendments agreed on by both Houſes.

* The Duke of *Richmond*, the Lord Great Chamberlain, the Earl of *Anglesey*, and the Lord *Paget*, are added to the Committee concerning *Thomas Skynner* and the *East India* Company.

Sir W. Ivan's Petition.

Ordered, That the Petition of Sir *William Ivan* ſhall be read To-morrow Morning.

Sir Wentworth againſt Ld. Lovelace.

Ordered, That on *Tueſday* next this Houſe will take into Conſideration what Reſolution to give in the Cauſe between the Lady *Wentworth*, and the Lord *Lovelace*.

Mildmay and Coniſb.

Ordered, That on *Tueſday* Morning next Counſel ſhall be heard concerning the Title to the Barony of Lord *Fitzwalter*.

Lucy's Bill.

Ordered, That the Bill for ſettling the Eſtate of Sir *Richard Lucy* ſhall be read To-morrow Morning.

Judgment upon Holles, &c. Reſolved, &c. to be affirmed in the King's Bench, nemine.

Whereas Counſel have been this Day heard, at the Bar, as well to argue the Errors aſſigned by the Lord *Holles*, Baron of *Ifield*, upon a Writ of Error depending in this Houſe, brought againſt a Judgement given in the Court of King's Bench, in 5^to^ *Caroli* Primi, againſt the ſaid Lord *Holles*, by the Name of *Denzell Holles* Eſquire, and others; as alſo to maintain and defend the ſaid Judgement on His Majeſty's Behalf:

Upon due Conſideration had of what hath been offered on both Parts thereupon, the Lords Spiritual and Temporal in Parliament aſſembled do order and adjudge, That the ſaid Judgement given in the Court of King's Bench in 5^to^ *Caroli* Primi, againſt the ſaid *Denzell Holles* and others, ſhall be reverſed.

The Form whereof (to be affixed to the Tranſcript of the Record) followeth:

"Et quia Curia Parliamenti, de Judicio ſuo, de & "ſuper præmiſſis reddend. nondum adviſatur, Dies "datus eſt tam prædicto *Galfr's Palmer* Mil. & Bar. "qui ſequitur, &c. quam prædicto *Denzel* Domino "*Hollis*, coram eâdem Curiâ, uſque ad Diem Mercurii "decimum quintum Diem Aprilis tunc prox. ſequent. "apud *Weſtm.* in Comitat. *Mid.* de Judicio ſuo "inde audiend. eo quod Curia prædicta nondum, &c. "Ad quem Diem coram Curiâ prædictâ venit tam "prædictus *Galfrid. Palmer* qui ſequitur, &c. quam "prædictus *Denzel* Dominus *Hollis*, in propriis Per-

* Vide p. 173. a.

"ſonis ſuis; ſuper quo, viſis & per eandem Curiam "nunc hic plenius intellectis omnibus & ſingulis præ-"miſſis, maturâque Deliberatione inde habitâ, conſi-"deratum eſt per Curiam prædictam, quod Judicium "prædictum, ob Errores prædict. & al. in Recordo "& Proceſſu prædictis compertos, revocetur, adnullie-"tur, & penitus pro nullo habeatur; et quod prædict. "*Denzell* Dominus *Hollis* ad omnia quæ idem *Denzell* "Dominus *Hollis* occaſione Judicii prædict. amiſit "reſtituatur."

Dominus Cuſtos Magni Sigilli declaravit præſens Parliamentum continuandum eſſe uſque in diem craſtinum, (*videlicet*,) 16^mum^ diem inſtantis Aprilis, hora decima Aurorâ, Dominis ſic decernentibus.

Adjourn.

DIE Jovis, 16° die Aprilis.

Domini tam Spirituales quam Temporales præſentes fuerunt:

His Royal Highneſs the Duke of *York*.

Arch. *Cant.*
Epus. *Durham.*
Epus. *Winton.*
Epus. *St. David's.*
Epus. *Hereford.*
Epus. *Ely.*
Epus. *Norwich.*
Epus. *Cheſter.*
Epus. *Sarum.*
Epus. *Petriburgh.*
Epus. *Carlile.*
Epus. *Rocheſter.*
Epus. *Oxon.*
Epus. *Lyncolne.*
Epus. *Exon.*

Sir *Orlando Bridgman*, Miles et Bar. Dns. Cuſtos Magni Sigilli.
Marq. *Worceſter.*
Edwardus Comes *Mancheſter*, Camerarius Hoſpitii.
Comes *Suffolk.*
Comes *Derſett.*
Comes *Bridgwater.*
Comes *Northton.*
Comes *Devon.*
Comes *Denbigh.*
Comes *Briſtol.*
Comes *Clare.*
Comes *Bolingbrooke.*
Comes *Berks.*
Comes *Dover.*
Comes *Petriburgh.*
Comes *Norwich.*
Comes *Eſſex.*
Comes *Cardigan.*
Comes *Bath.*
Comes *Carlile.*
Comes *Craven.*
Vicecomes *Say & Seale.*
Vicecomes *Hallifax.*

Dns. *Arlington*, One of the Principal Secretaries of State.
Dns. *Audley.*
Dns. *Berkley de Berk.*
Dns. *Windſor.*
Dns. *Eure.*
Dns. *Chandos.*
Dns. *Petre.*
Dns. *Arundell de Ward.*
Dns. *Howard de Charlt.*
Dns. *Grey.*
Dns. *Lovelace.*
Dns. *Poulet.*
Dns. *Maynard.*
Dns. *Powis.*
Dns. *Byron.*
Dns. *Ward.*
Dns. *Colepeper.*
Dns. *Lucas.*
Dns. *Bellaſis.*
Dns. *Gerard de Brand.*
Dns. *Wotton.*
Dns. *Berkley de Strat.*
Dns. *Holles.*
Dns. *Cornwallis.*
Dns. *Dulamer.*
Dns. *Aſhley.*
Dns. *Crewe.*
Dns. *Freſchville.*
Dns. *Arundell de Trer.*

PRAYERS.

Meſſage from H. C. with a Bill.

A Meſſage was brought from the Houſe of Commons, by Sir *Baynham Throgmorton* and others; who brought up a Bill, intituled, "An Act for the Increaſe "and Preſervation of Timber within the Foreſt of "*Deane*," to which they deſire their Lordſhips Concurrence.

Bill againſt Atheiſm, &c.

The Houſe was adjourned into a Committee, to take further Conſideration of the Bill againſt Atheiſm and Profaneneſs, &c.

The Houſe being reſumed;

The Lord Chamberlain reported, "That the Com-"mittee of the whole Houſe, taking into Debate the "Bill againſt Atheiſm, deſires that a Day may be ap-"pointed

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